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Immigration Relief for Victims of Trafficking

October 28, 2020

Congressional Research Service

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R46584



R46584

October 28, 2020

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Human trafficking occurs throughout the United States, and traffickers exploit vulnerable individuals for commercial sex and forced labor in a variety of legal and illegal industries. Trafficking victims include both U.S. citizens and noncitizens (referred to as *aliens* in immigration law), and some of the noncitizen victims are unauthorized immigrants. However, under federal law there are certain protections from removal (deportation) that are available to eligible noncitizen victims of trafficking.

- **T Nonimmigrant Status.** The Victims of Trafficking and Violence Protection Act of 2000 (TVPA; P.L. 106-386, as amended) created a new nonimmigrant category, known as T status or T-visa, for aliens who are victims of severe forms of trafficking in persons. The T status protects eligible aliens from removal and provides a path to permanent residency. The number of T status recipients is limited to 5,000 principal aliens each fiscal year.
- **U Nonimmigrant Status.** The Violence Against Women Act of 2000, Division B of the TVPA, created the U nonimmigrant status or U-visa for noncitizen victims who have suffered physical or mental abuse as a result of a qualifying crime, include human trafficking. The U status also protects eligible aliens from removal and provides a path to permanent residency. The number of U status recipients is limited to 10,000 principal aliens per fiscal year. The number of aliens granted U status because of trafficking is not publicly available.
- **Continued Presence.** Continued presence is not an immigration status but it can offer protection from removal. The TVPA gave the Secretary of Homeland Security the authority to grant continued presence for trafficking victims and prescribed some circumstances under which it can be utilized. The mechanisms for continued presence may include parole, voluntary departure, stay of final removal orders, or any other authorized form of continued presence in the United States, including adjustment to an applicable nonimmigrant status.

Of note, comprehensive data on the prevalence of human trafficking in the United States are not available. Similarly, the number of noncitizen victims of trafficking, including the number of victims who may be eligible for immigration relief, is unknown. However, when legislating on and conducting oversight of the federal government's use of the T status and U status for trafficking victims, policymakers may consider a number of issues:

- **The extent to which the T status is utilized.** The 5,000 principal status cap has not been met in any of the most recent 10 fiscal years for which data are available. Policymakers may look at factors that potentially contribute to what some observers consider to be underutilization of the status. They may also consider whether the 5,000 cap is still the appropriate level.
- **High demand for the U status.** The 10,000 principal alien annual cap has resulted in a backlog of applicants awaiting decisions. Policymakers may examine how this backlog may affect vulnerable individuals such as trafficking victims.

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Human trafficking occurs throughout the United States, and traffickers exploit vulnerable individuals for commercial sex and forced labor in a variety of legal and illegal industries.¹ Trafficking victims include both U.S. citizens and noncitizens (referred to as *aliens* in immigration law),² and some of the noncitizen victims of trafficking do not have a lawful immigration status. Some entered lawfully while others entered unlawfully. For some, their victimization began before they entered the United States, while for others, it began after.

The lack of a lawful immigration status may prevent or deter some trafficking victims from seeking help or reaching out to law enforcement. This may be due, in part, to fear of removal (deportation). However, under federal law there are certain protections from removal that are sometimes available to noncitizen victims of trafficking.

- Noncitizen victims of trafficking are potentially eligible for the T nonimmigrant status, which protects them from removal and provides a path to permanent residency.
- U nonimmigrant status is available to certain noncitizen victims of crime and may be available to trafficking victims who do not qualify for T status; the U status also provides a path to permanent residency.
- Trafficking victims may be eligible for *continued presence*, which is not an immigration status but can offer protection from removal, among other benefits.³

This report provides a brief overview of human trafficking in the United States, discusses these three types of immigration relief available to trafficking victims, and presents relevant issues policymakers may consider regarding immigration protections available to these victims.

Conceptualizing Trafficking in Persons

Human trafficking in the United States is broadly conceptualized in two categories: sex trafficking and labor trafficking. More foreign victims are found in labor trafficking than in sex trafficking.⁴ Conversely, more U.S. citizens are found to be victims of sex trafficking. Further, the United States prosecutes more individuals for sex trafficking than for labor trafficking offenses.⁵

Federal statutes do not formally define human trafficking or trafficking in persons. Rather, the Victims of Trafficking and Violence Protection Act of 2000 (TVPA; P.L. 106-386, as amended) defines *severe forms of trafficking in persons* to mean:

¹ See CRS Report R44315, *Justice for Victims of Trafficking Act of 2015: Changes to Domestic Human Trafficking Policies*. See also, Department of State, *2020 Trafficking in Persons Report: United States*, <https://www.state.gov/reports/2020-trafficking-in-persons-report/united-states/>. As outlined in the State Department report, these industries include “hospitality, traveling sales crews, agriculture, janitorial services, construction, landscaping, restaurants, factories, care for persons with disabilities, salon services, massage parlors, retail, fairs and carnivals, peddling and begging, drug smuggling and distribution, religious institutions, child care, and domestic work.”

² Some unknown portion of these alien victims are illegally present in the country (i.e., unauthorized aliens, sometimes referred to as *undocumented*).

³ *Continued presence* refers to the Secretary of the Department of Homeland Security’s discretionary authority to use a variety of statutory and administrative mechanisms to ensure an alien’s continued presence in the United States.

⁴ Human Smuggling and Trafficking Center, *Domestic Human Trafficking: An Internal Issue*, December 2008.

⁵ Department of State, *2020 Trafficking in Persons Report: United States*, <https://www.state.gov/reports/2020-trafficking-in-persons-report/united-states/>.

(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.⁶

Under the TVPA, force, fraud, or coercion are necessary elements to establish trafficking of an adult victim, but are not necessary elements to establish sex trafficking of a victim under age 18. The movement of persons across jurisdictional boundaries is not necessary to establish that human trafficking has occurred.

Distinguishing Between Human Trafficking and Human Smuggling

The term *human trafficking* is often mistakenly used interchangeably with *human smuggling*; however, they are distinct concepts. As the Department of Homeland Security has noted, “[h]uman trafficking does not require crossing a border. Human trafficking victims have been exploited by their trafficker for commercial sex acts or labor. By contrast, human smugglers engage in the crime of bringing people into the United States, or unlawfully transporting and harboring people already in the United States, in deliberate evasion of immigration law. In some situations, human smuggling may result in human trafficking.”⁷

Some observers have also made the distinction that human trafficking is a “crime against a person” whereas human smuggling is a “crime against the state.”⁸ And while it can sometimes be challenging to distinguish between the two, particularly in fluid situations where smuggled migrants have later been trafficked, the United Nations Office on Drugs and Crime (UNODC) highlights three key factors of differentiation:

- Consent: Smuggling involves moving individuals who have consented to the smuggling; trafficking involves exploiting individuals who never consented, or if they initially consented, became victimized with the addition of force, fraud, or abuse.
- Exploitation: Smuggling ends with the arrival of an individual at their destination; trafficking involves the ongoing exploitation of a victim for profit.
- Transnationality: Smuggling involves crossing international borders; trafficking does not need to involve the movement of persons.⁹

Data on Noncitizen Victims of Human Trafficking

For a number of reasons, including the clandestine criminal nature of human trafficking, it is difficult to estimate the scope of human trafficking in the United States, and there are no comprehensive data on its prevalence.¹⁰ Similarly, the number of noncitizen victims, or the number of victims who may be eligible for immigration relief, is unknown.

While comprehensive human trafficking data are not available, some snapshots of data exist. For instance, the National Human Trafficking Hotline produces reports including data on potential trafficking situations.¹¹ In 2019, the hotline received information on 11,500 potential cases of

⁶ 22 U.S.C. §7102.

⁷ U.S. Department of Homeland Security, *Department of Homeland Security Strategy to Combat Human Trafficking, the Importation of Goods Produced with Forced Labor, and Child Sexual Exploitation*, January 2020, p. 5.

⁸ Statement by Claire Antonelli of Global Rights, Center for Strategic and International Studies Event on Human Trafficking in Latin America, July 9, 2004.

⁹ United Nations Office on Drugs and Crime (UNODC), *Trafficking in Persons and Migrant Smuggling*, <https://www.unodc.org/lpo-brazil/en/trafico-de-pessoas/index.html>.

¹⁰ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Human Trafficking into and within the United States: A Review of the Literature*, at <https://aspe.hhs.gov/system/files/pdf/75891/index.pdf>.

¹¹ See National Human Trafficking Hotline, *Hotline Statistics*, at <https://humantraffickinghotline.org/states>. The data tracked by the hotline only include those reports the hotline receives, and thus represent an unknown subset of total

human trafficking, identifying 22,326 survivors across the United States. While some reports include demographic information on citizenship status and/or ethnicity of survivors, not all reports contain this information. Moreover, according to the State Department's *2020 Trafficking in Persons Report*, trafficking "victims [in the United States] originate from almost every region of the world; the top three countries of origin of federally identified victims in FY 2019 were the United States, Mexico, and Honduras."¹²

Federal Efforts to Counter Human Trafficking

U.S. efforts to counter trafficking in persons include protection and services for victims, education of the public, and the investigation and prosecution of trafficking offenses.

- Several departments (primarily the Department of Justice (DOJ), the Department of Health and Human Services (HHS), and the Department of Labor (DOL)) have programs, or administer grants to other entities, that provide victim assistance tailored to trafficking victims. Such assistance may include temporary housing, independent living skills, cultural orientation, transportation, job training, mental health counseling, and legal assistance.
- A number of federal agencies administer public awareness campaigns on identifying human trafficking victims. The Department of Homeland Security's (DHS's) Blue Campaign is one such example.¹³
- The majority of human trafficking cases investigated at the federal level are handled by agents in the Federal Bureau of Investigation (FBI) and U.S. Immigration and Customs Enforcement, Homeland Security Investigations (ICE HSI), who coordinate with others as appropriate. DOJ prosecutes these cases.¹⁴

Victim Services: Certification for Noncitizen Trafficking Victims

Because noncitizens are ineligible for certain public benefits, the TVPA established a *certification* process through which noncitizen victims of trafficking who are certified as such are eligible for certain benefits and services.¹⁵ (U.S. citizen and legal permanent resident trafficking victims are not required to be certified.) The HHS Secretary, after consultation with the Secretary of Homeland Security, is responsible for issuing certification letters to adult noncitizen victims of trafficking.¹⁶

Certification by HHS affirms that (1) a victim is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons and (2) has made a bona fide application for a T-visa that has not been denied, or has been granted continued presence in the United States by the Secretary of Homeland Security to effectuate the prosecution of traffickers in persons.¹⁷

human trafficking cases in the United States.

¹² Department of State, *Trafficking in Persons Report: 20th Edition*, June 2020, p. 532, at <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>.

¹³ For more information, see <https://www.dhs.gov/blue-campaign>.

¹⁴ More information on DOJ's efforts to counter human trafficking are available at <https://www.justice.gov/humantrafficking/department-justice-components>. More information on the FBI's role in investigating human trafficking is available at <https://www.fbi.gov/investigate/violent-crime/human-trafficking>. For information on ICE HSI's role in investigating human trafficking, see <https://www.ice.gov/features/human-trafficking>.

¹⁵ See 22 U.S.C. §7105.

¹⁶ Under the TVPA, to receive certain benefits and services, noncitizen victims of severe forms of trafficking who are at least 18 years old must be certified by HHS. Noncitizen trafficking victims under age 18 do not have to be certified to receive benefits and services, but HHS issues *eligibility letters* to such victims. For more information, see <https://www.acf.hhs.gov/otip/victim-assistance/eligibility-letters>.

¹⁷ For more information about victim certification, see <https://www.acf.hhs.gov/otip/victim-assistance/certification>.

T Nonimmigrant Status

The TVPA created a new nonimmigrant category, known as T status or T-visa, for aliens who are victims of severe forms of trafficking in persons.¹⁸ Although T nonimmigrant status is often referred to as the T-visa, it is not technically a visa if it is given to aliens present in the United States because the status is conferred by HHS, which does not have the authority to issue visas. Only the State Department, through consular offices, may issue visas.¹⁹ Thus, only aliens present outside of the United States can receive T-visas, while aliens present in the United States receive T status.

T Status Eligibility

To qualify for the T category, an alien must

- demonstrate that he/she is a victim of a severe form of trafficking in persons;²⁰
- be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a U.S. port of entry because of such trafficking, or be admitted to the United States to participate in investigative or judicial processes associated with such trafficking;²¹
- have complied with any reasonable request for assistance to law enforcement²² in the investigation or prosecution of acts of trafficking unless unable to do so due to physical or psychological trauma, or being under age 18;²³ and
- be likely to suffer extreme hardship involving unusual and severe harm upon removal.

To receive T status, the alien must also be admissible to the United States or obtain a waiver of inadmissibility. A waiver of inadmissibility is available for health related grounds, public charge

¹⁸ Section 107, Division A, P.L. 106-386. “T” refers to the letter denoting the subsection of the Immigration and Nationality Act (INA) that provides the authority for the alien’s admission into the United States (i.e., INA §101(a)(15)(T), codified at 8 U.S.C. §1101(a)(15)(T)).

¹⁹ For more information on nonimmigrant visa issuance, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

²⁰ It is the applicant’s responsibility to demonstrate the elements of a severe form of trafficking in persons. For example, the applicant must include a personal statement explaining in their own words describing the facts of their victimization (8 C.F.R. 214.11(d)(2)).

²¹ Prior to the TVPA reauthorization in 2008 (P.L. 110-457), this was interpreted in the regulations to apply to those aliens who (1) are present because they are being held in some sort of severe form of trafficking situation, (2) were recently liberated from a severe form of trafficking, or (3) were subject to a severe form of trafficking in the past and remain present in the United States for reasons directly related to the original trafficking. P.L. 110-457 expanded the definition of physical presence to include trafficking victims admitted to the United States for trafficking investigations and legal proceedings.

²² To be eligible for T status, most aliens must submit evidence that they have complied with reasonable requests for assistance from law enforcement. A signed declaration from law enforcement can support a T status application, but it is not required. It is not necessary for the alien to be *certified* by a law enforcement agency, as is required by those applying for U nonimmigrant status for alien crime victims. For more information, see U.S. Citizenship and Immigration Services (USCIS), *Information for Law Enforcement Agencies and Judges*, at <https://www.uscis.gov/tools/information-for-law-enforcement-agencies-and-judges>.

²³ Children under age 18 at the time that the application for T status is filed are exempt from the requirement to comply with law enforcement requests for assistance. In the original TVPA (P.L. 106-386, as amended), the age of mandatory compliance was under 15, but the TVPA reauthorization in 2003 (P.L. 108-193) increased the age of mandatory compliance to 18.

(indigence) grounds, or criminal grounds if the activities rendering the alien inadmissible were caused by or incident to the alien's victimization.²⁴ The waiver is not automatically granted, and there is no appeal if it is denied. This waiver may be particularly relevant for those involved in sex trafficking because prostitution is one of the grounds of inadmissibility specified in the Immigration and Nationality Act.²⁵ Additionally, aliens who are present without being admitted or paroled²⁶ into the United States are inadmissible and would need to obtain a waiver to be eligible for T status. For example, an alien who paid a smuggler to enter the country illegally and then was held in servitude would need to get an inadmissibility waiver to be eligible for T status.

Issuance of T Status

The number of T status recipients is limited to 5,000 principal aliens each fiscal year. Additionally, the spouse, children, or parents of an alien under age 21 may be given derivative T status in order to avoid extreme hardship; derivatives are not counted against the numerical limit.²⁷

U.S. Citizenship and Immigration Services (USCIS) issues reports on the number of T nonimmigrant status applications by victims and family members of victims, as well as the status of those applications at the end of each fiscal year. **Table 1** includes data on the number of victim and family applications for T status for the 10-year period from FY2010 to FY2019. In FY2019, 1,242 trafficking victims submitted applications, and USCIS approved 500. In that same fiscal year, 1,011 family members of victims submitted applications, and USCIS approved 491.²⁸

Table 1. USCIS Applications for T Nonimmigrant Status
FY2010–FY2019

Fiscal Year	Victim Applications				Family of Victim Applications			
	Submitted	Approved	Denied	Pending	Submitted	Approved	Denied	Pending
2010	541	446	102	305	518	361	74	D
2011	882	556	145	502	909	708	114	D
2012	790	667	81	565	848	747	94	453
2013	804	851	97	421	1,021	984	85	518
2014	908	619	135	590	913	787	95	579
2015	1,014	611	239	809	1,113	692	182	854
2016	955	748	175	869	890	937	144	713
2017	1,177	669	213	1,180	1,142	667	123	1,100

²⁴ 8 U.S.C. §1182(d)(13).

²⁵ 8 U.S.C. §1182(a)(2)(D).

²⁶ *Parole* is a term in immigration law that means the alien has been granted temporary permission to be in the United States. Parole does not constitute formal admission to the United States and parolees are required to leave when the parole expires, or to be admitted in a lawful status if eligible.

²⁷ In some cases, immediate family members of a trafficking victim may receive a T-visa to join the victim in the United States. This may be necessary if the traffickers are threatening the victim's family.

²⁸ U.S. Citizenship and Immigration Services, *Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status: Fiscal Years 2008 – 2019*.

Fiscal Year	Victim Applications				Family of Victim Applications			
	Submitted	Approved	Denied	Pending	Submitted	Approved	Denied	Pending
2018	1,613	576	300	1,916	1,315	703	251	1,483
2019	1,242	500	365	2,358	1,011	491	216	1,860

Source: USCIS, *Number of Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status: Fiscal Years 2008 – 2019*.

Notes: D = Data disclosure standards not met, according to USCIS. In addition, some approvals and denials may have been received in prior fiscal year(s) filings.

As **Table 1** shows, from FY2010 to FY2019, 63% of the adjudicated applications for T-1 status were approved, and 73% of the adjudicated applications for derivative T status were approved.

Stringency of T Determination

As **Table 1** shows, the annual cap of 5,000 principal T status issuances has not been met in the 10 most recent fiscal years for which data are available. The regulations state that “in view of the annual [5,000] limit imposed by Congress for T-1 status, and the standard of extreme hardship involving unusual and severe harm, [DHS] acknowledges that the T-1 status will not be an appropriate response with respect to many cases involving aliens who are victims of severe forms of trafficking.”²⁹ Some observers contend that the extreme hardship threshold makes it difficult for victims to receive T status.³⁰ In addition, the processing times for T status determinations have increased in the last five years, from approximately 8 months in FY2016 to 16.4 months in FY2020 (as of June 30, 2020).³¹

T Status Benefits

T status is valid for four years, and may be extended if a federal, state, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of human trafficking.³² Individuals with T status can remain in the United States lawfully.

Individuals who receive T-1 status (i.e., principal petitioners) are granted work authorization by virtue of their status.³³ They can work anywhere in the United States for any employer. T status

²⁹ Department of Justice, Immigration and Naturalization Service, “New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status” 67 *Federal Register* 4785. January 31, 2002.

³⁰ Testimony of Derek J. Marsh, Co-Director Orange County Human Trafficking Task Force, in U.S. Congress, House Committee on Homeland Security, *Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part II*, 110th Cong., 1 sess., March 20, 2007; and Rieger, “Missing the Mark: Why The Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States,” p. 250.

³¹ This is the only historical time period for which application processing data are publically available. See U.S. Citizenship and Immigration Services, “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year: Fiscal Year 2016 to 2020 (up to June 30, 2020),” at <https://egov.uscis.gov/processing-times/historic-pt>.

³² The four-year period of validity for T-visas was codified by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162, §821). Prior to P.L. 109-162, the validity period was three years and was specified by regulation (8 C.F.R. §214.11), not by statute.

³³ 8 C.F.R. §274a.12(a)(16).

derivatives (e.g., T-2, T-3), must apply for employment authorization, which is granted at the discretion of DHS and may include restrictions.³⁴

Under law, aliens who have bona fide T applications³⁵ are eligible to receive certain public benefits to the same extent as refugees.³⁶ Aliens who receive derivative T status (i.e., the family members of trafficking victims) are also eligible for the same benefits.

Adjustment to Lawful Permanent Residence

After three years, aliens with T status may petition for lawful permanent residence (LPR) status (i.e., a green card).³⁷ To adjust to LPR status, an alien with T status must

- have been physically present in the United States for either (1) a continuous period of at least three years since the date of admission under T status, or (2) a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has certified that the investigation or prosecution is complete;
- be admissible (i.e., the alien is not ineligible for a visa or status adjustment under the grounds for inadmissibility of the INA, which include having a criminal history, being a terrorist, and being a security risk to the United States);³⁸
- since being granted T status, have been a person of *good moral character*;³⁹ and
- establish that (1) they have complied with reasonable requests of assistance in the investigation or prosecution of acts of trafficking, or (2) that they would suffer extreme hardship upon removal from the United States.⁴⁰

Under statute, 5,000 aliens in T-1 status can adjust to LPR status in a fiscal year.⁴¹ The cap does not apply to family members (e.g., T-2, T-3, etc. visa holders).

³⁴ 8 C.F.R. §274a.12(c)(25).

³⁵ *Bona fide application* means an application for T status that has been determined after initial review to be complete, without evidence of fraud, and possessing prima facie evidence of eligibility for T status, including admissibility.

³⁶ Refugees are eligible for certain federal, state, and local public benefits. For example, refugees are eligible for Supplemental Nutrition Assistance Program (SNAP) and Supplemental Security Income (SSI) for seven years after entry, and for Medicaid and Temporary Assistance for Needy Families (TANF) for seven years after entrance and then at state option. For more information, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*.

³⁷ The regulations concerning adjustment to LPR status from T status were released on December 12, 2008, and became effective on January 12, 2009. Department of Homeland Security, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” *73 Federal Register* 75540-75564, December 12, 2008.

³⁸ 8 U.S.C. §1182.

³⁹ *Good moral character* is described in 8 U.S.C. §1101(f) and further defined in 8 C.F.R. §316.10.

⁴⁰ 8 C.F.R. §245.23.

⁴¹ 8 U.S.C. §1255(l)(4)(A).

U Nonimmigrant Status

The Violence Against Women Act of 2000, Division B of the TVPA, created the U nonimmigrant status, often called the U-visa,⁴² for noncitizen victims who have suffered physical or mental abuse as a result of a qualifying crime.⁴³ Qualifying crimes include human trafficking.⁴⁴

U Status Eligibility

To qualify for U status, an alien must file a petition and establish that

- he/she suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activities;
- as certified by a law enforcement or immigration official, he/she (or if the alien is a child under age 16, the child’s parent, guardian, or friend) possesses information about the criminal activity involved;⁴⁵
- he/she has been, is being, or is likely to be helpful in the investigation and prosecution of the criminal activity by federal, state, or local law enforcement authorities; and
- the criminal activity violated the laws of the United States or occurred in the United States.

Issuance of U Status

The U category is limited to 10,000 principal aliens per fiscal year.⁴⁶ The number of aliens granted U status because of trafficking victimization is unknown.⁴⁷

Table 2. U Status Issued, FY2010-FY2019

FY	Principal Aliens (Victims)				Derivative Aliens (Family)			
	Applied	Approved	Denied	Pending	Applied	Approved	Denied	Pending
2010	9,657	10,015	3,995	7,480	6,418	9,315	2,576	6,242
2011	14,657	10,025	2,007	10,250	10,033	7,602	1,645	8,329

⁴² As with the T category, although U nonimmigrant status is often referred to as the U-visa, it is not technically a visa if it is given to aliens present in the United States because status is conferred by DHS, which does not have the authority to issue visas. Only the State Department, through consular offices, may issue visas. Thus, only aliens present outside of the United States can receive U-visas while aliens present in the United States receive U status.

⁴³ 8 U.S.C. §1101(a)(15)(U).

⁴⁴ Qualifying criminal activity refers to one or more of the following or any similar activity in violation of federal or state criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter, murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. For other examples of qualifying crimes, see Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, p. 7, at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

⁴⁵ This requirement is mandatory for U status applicants but optional for T status applicants.

⁴⁶ INA §214(o)(2). Although the interim final regulations on U status were released in September 2007, prior to that aliens who met the criteria for U status were given immigration benefits similar to U status. In 2005, for example, 287 aliens were given “quasi-U” status. Unpublished data from DHS.

⁴⁷ Currently, USCIS does not break down U status data by type of qualifying crime (CRS correspondence with USCIS in October 2020).

	Principal Aliens (Victims)				Derivative Aliens (Family)			
2012	21,141	10,031	1,684	19,824	15,126	7,421	1,465	15,592
2013	25,486	10,022	1,840	33,409	18,266	7,724	1,234	24,480
2014	26,089	10,077	3,662	45,814	19,297	8,457	2,655	32,948
2015	30,129	10,060	2,440	63,779	22,636	7,649	1,754	46,507
2016	34,797	10,019	1,761	87,290	25,469	7,624	1,257	63,616
2017	37,287	10,011	2,042	112,272	25,703	7,628	1,612	79,971
2018	34,967	10,009	2,317	134,714	24,024	7,906	1,991	94,050
2019	28,364	10,010	2,733	151,758	18,861	7,846	2,397	103,737

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, at https://www.uscis.gov/sites/default/files/document/data/I918u_visastatistics_fy2020_qtr2.pdf.

Notes: Some approvals and denials may have been received in prior fiscal year(s) filings.

The 10,000 Cap for U Status

The U status category is statutorily limited to 10,000 principal aliens per fiscal year. As shown in **Table 2**, the statutory cap of 10,000 has been reached before the end of each fiscal year since FY2010.⁴⁸ Although the statutory cap is reached, USCIS continues to accept and process new petitions for U status and issues *conditional approval* and work authorization to petitioners who are found eligible for but are unable to receive U status because the cap has been reached.⁴⁹ Unlawfully present aliens on the waiting list for U nonimmigrant status typically receive a discretionary reprieve from removal—deferred action or parole.⁵⁰ However, it takes an average of approximately four years for DHS to vet U nonimmigrant status applicants for eligibility before placing them on the waiting list and granting them deferred action or parole.⁵¹ After conditional approval, it can take more than 15 years (as of March 2020) to receive U status due to the backlog of applicants and the annual cap of 10,000.⁵²

U Status Benefits

U status is generally valid for four years. It can only be extended beyond four years if “the alien’s presence in the United States continues to be necessary to assist in the investigation or

⁴⁸ This statutory cap has been of interest to policymakers. For example, in the 115th and 116th Congresses, the Immigrant Witness and Victim Protection Act of 2018 (H.R. 5058) and 2019 (H.R. 4319) were introduced in the House. While these bills were not identical, both would eliminate the annual numerical limit on the U nonimmigrant status (i.e., the 10,000 cap) as well as provide work authorization to T and U applicants either upon approval or 180 days after submitting their application (whichever comes first).

⁴⁹ Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, p. 5, at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

⁵⁰ 8 C.F.R. §214.14(d)(2).

⁵¹ This is an increase from FY2016, when it took an average of less than two years to process cases. See U.S. Citizenship and Immigration Services, “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year: Fiscal Year 2016 to 2020 (up to June 30, 2020),” at <https://egov.uscis.gov/processing-times/historic-pt>. In addition, updated USCIS information on case processing times is available at <https://egov.uscis.gov/processing-times/>.

⁵² Based on CRS analysis of Department of Homeland Security, U.S. Citizenship and Immigration data, available at https://www.uscis.gov/sites/default/files/document/data/I918u_visastatistics_fy2020_qtr2.pdf.

prosecution of the qualifying criminal activity.”⁵³ Individuals with U status can remain in the United States lawfully.

Principal and derivative aliens in U status are authorized to work by virtue of their status.⁵⁴ They can work anywhere in the United States for any employer.

Unlike aliens with T status, those with U status are not eligible for federal public benefits to the same extent as refugees. However, those who receive U status may be eligible for crime victim assistance and/or compensation through programs funded by DOJ.⁵⁵

Adjustment to Lawful Permanent Residence Status

After three years, those with U status may apply for LPR status (i.e., a green card).⁵⁶ To adjust to LPR status, an alien must have

- been physically present in the United States for a continuous period of at least three years since the date of admission under U status;
- not participated in “Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing”;⁵⁷
- “not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status”;⁵⁸ and
- “establish[ed] to the satisfaction of the Secretary that the alien’s presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.”⁵⁹

Unlike T status, there is no limit on the number of individuals with U status (whether principal or derivatives) who can adjust to LPR status in a fiscal year.

Continued Presence

Federal law enforcement officials who encounter victims of severe forms of trafficking in persons that are potential witnesses to that trafficking may request that DHS grant continued presence of the alien victim in the United States. Historically, the Attorney General has had discretionary authority to use a variety of statutory and administrative mechanisms to allow the alien’s

⁵³ 8 C.F.R. 214.14(g)(2)(ii).

⁵⁴ 8 C.F.R. §274a.12(a)(19) and (20).

⁵⁵ For information on victim assistance and compensation supported by DOJ, see CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*; and CRS Report R45410, *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization*.

⁵⁶ The regulations concerning adjustment to LPR status from U status were released on December 12, 2008, and became effective on January 12, 2009. Department of Homeland Security, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” 73 *Federal Register* 75540-75564, December 12, 2008.

⁵⁷ 8 C.F.R. §245.24(b)(4); 8 U.S.C. §1182(a)(3)(E).

⁵⁸ 8 C.F.R. §245.24(b)(5).

⁵⁹ 8 C.F.R. §245.24(b)(6).

continued presence.⁶⁰ These mechanisms include parole, voluntary departure,⁶¹ stay of final removal orders,⁶² or any other authorized form of continued presence in the United States, including adjustment to an applicable nonimmigrant status.⁶³

The TVPA gave the Secretary of Homeland Security the authority to grant continued presence for trafficking victims and prescribed some circumstances under which it can be utilized.⁶⁴ In most cases, victims granted continued presence are eligible for work authorization.⁶⁵ Requests for continued presence are handled by the Law Enforcement Parole Branch of DHS’s Immigration and Customs Enforcement. During the most recent 10-year period for which data is publicly available, fewer than 300 people were granted continued presence in any year (See **Table 3**).⁶⁶

Table 3. Continued Presence Granted to Trafficking Victims

FY2009-FY2018

FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
299	186	283	199	171	122	175	129	160	121

Source: Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons*, multiple years.

Note: FY2018 is the most recent year with available data.

Issues for Congressional Consideration

In passing the TVPA, “Congress intended to create a broad range of tools necessary for the Federal government to address the particular concerns associated with the problem of trafficking in persons.”⁶⁷ In particular, the TVPA and its subsequent reauthorizations have not only provided tools to target traffickers but have established services and protections for victims, including for noncitizen victims. This includes providing immigration benefits to those “who may not have legal status and are reluctant to cooperate.”⁶⁸ In conducting oversight of the federal government’s use of the T status and U status for trafficking victims, policymakers may consider a number of issues.

⁶⁰ 28 C.F.R. Part 1000.35.

⁶¹ Voluntary departure allows an alien to depart the United States at his or her own expense in lieu of removal proceedings or enforcement of a removal order. It generally provides a window of time prior to required departure from the United States. For more information, see 8 U.S.C. §1229c.

⁶² DHS may *stay* a final order of removal (deportation) against an alien to allow him or her to pursue relief or in light of practical or humanitarian considerations. For more information, see CRS Report R45158, *An Overview of Discretionary Reprieves from Removal: Deferred Action, DACA, TPS, and Others*.

⁶³ Most of the statutory and administrative mechanisms for continued presence require that the alien depart from the United States once his/her presence for the criminal investigation or prosecution is no longer required. Some of these authorities were transferred to the DHS Secretary in the Homeland Security Act of 2002 (P.L. 107-296). Others remain with or are shared by the Attorney General.

⁶⁴ 22 U.S.C. §7105(c)(3).

⁶⁵ Viet D. Dinh, Department of Justice, “Testimony before the Senate Subcommittee on Near Eastern and South Asian Affairs concerning Monitoring and Combating Trafficking in Persons: How Are We Doing?”, March 7, 2002.

⁶⁶ Department of State, *Trafficking in Persons Report*, multiple years; and Department of Justice, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons*, multiple years.

⁶⁷ Department of Justice, Immigration and Naturalization Service, “New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status,” 67 *Federal Register* 4785. January 31, 2002.

⁶⁸ *Ibid.*

Congress may examine the extent to which T status is utilized as well as whether the 5,000 cap is still the appropriate level. As shown in **Table 1**, the 5,000 principal status cap has not been met in any of the most recent 10 fiscal years for which data are available. Policymakers may look at factors that potentially contribute to what some observers consider to be underutilization of the status. For instance, they may examine how law enforcement priorities surrounding human trafficking generate cases with noncitizen victims who might be eligible for T status. Policymakers may also question whether any elements of the application process may impede victims from applying for T status or create difficulties for victims in meeting the standards of T status. Additionally, in examining how various forms of immigration relief contribute to overall immigration trends in the United States, policymakers may examine the extent to which those with T status have adjusted to LPR status, as well as their applications for derivative status (e.g., T-2, T-3) for qualifying family members.

The U status raises different questions for policymakers, as it is in high demand rather than being underutilized. The 10,000 principal alien annual cap has resulted in a backlog of applicants with conditional approval but without the U status due to the annual cap (see **Table 2**). Policymakers may examine specifically how this backlog could affect trafficking victims relative to other victims of crime.

In addition to the post-adjudication backlog, it takes DHS approximately four years to vet U status applications. Human rights organizations have highlighted that while the “U visa has been an essential tool in strengthening relationships with immigrant communities and ensuring public safety,” the wait time before adjudication leaves applicants without decisions, which can increase their vulnerability to further abuse.⁶⁹ Other observers are concerned about the waitlist for different reasons; as applicants on the waitlist are granted deferred action or parole, critics see the program as conferring “de facto residency” for thousands of noncitizens and fear that the program could be exploited by unqualified applicants.⁷⁰

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⁶⁹ Human Rights Watch, “Immigrant Crime Fighters: How the U Visa Program Makes US Communities Safer,” July 3, 2018, at <https://www.hrw.org/report/2018/07/03/immigrant-crime-fighters/how-u-visa-program-makes-us-communities-safer>.

⁷⁰ Jessica Vaughan, “Visas for Victims: A Look at the U Visa Program,” *Center for Immigration Studies*, March 30, 2020, at <https://cis.org/Report/Visas-Victims-Look-U-Visa-Program>.

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