

Recommendations for Legislation to Further Protect the Rights of Trafficked Persons MAY 2004

Freedom Network (USA), which was established in 2001, is a coalition of 22 non-governmental organizations that provide services to, and advocate for the rights of, trafficking survivors in the United States. Since the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Freedom Network (USA) members have worked closely with trafficked persons to ensure that they receive necessary services guaranteed under the VTVPA and have also been engaged in monitoring implementation of the law. Our collective experiences inform the following recommendations, which we believe are critical to protecting the rights of persons trafficked into the United States.

- **All survivors of trafficking who have demonstrated that they are victims of severe forms of trafficking and are present in the United States should be permitted to remain in the United States if they comply with reasonable law enforcement requests OR would face extreme hardship upon removal.** Currently, victims must comply with reasonable requests from law enforcement AND face extreme hardship involving severe and unusual harm in order to stay in the United States. The vast majority of survivors of trafficking will eagerly comply with law enforcement requests whether they are required to do so or not. However, in limited circumstances, survivors of trafficking are unable to cooperate because they are emotionally and/or physically unable or in fear for their safety or the safety of their family members. These survivors should not be expected to cooperate, at least until they are emotionally stable, physically well and safe. In keeping with the humanitarian goals of the VTVPA, if survivors of trafficking have proven that they have escaped from slavery, are present in the United States on account of the slavery, and face extreme hardship upon removal, they should be permitted to remain here without being compelled to comply with law enforcement requests. Accordingly, we respectfully request that the Immigration and National Act be amended to permit survivors of trafficking to be eligible for T Visas if they face extreme hardship upon removal OR comply with reasonable law enforcement requests.
- **The law should clearly state that law enforcement officials are required to provide a “law enforcement agency” endorsement to a trafficked person when that person exhibits willingness to cooperate by offering information on a trafficking situation.** In many cases, trafficking survivors are willing to give information to law enforcement officials to pursue a criminal case against the trafficker. At that point, the trafficked person has shown a willingness to cooperate with law enforcement, and has met his or her requirement under the VTVPA. The law enforcement official should not unnecessarily withhold the endorsement until some later date or case milestone. Furthermore, the law enforcement official should not unnecessarily withhold the endorsement because the government does not wish to pursue an investigation or prosecution at that point in time.

- **All trafficked persons who come forward to cooperate with law enforcement should have the express right to legal counsel.** Such representation is critical because many trafficking survivors fear self-incrimination, prosecution and deportation, and counsel is in the best position to assert the rights of a trafficked person. Furthermore, it takes tremendous courage for trafficking victims to come forward and they should not be re-traumatized by the criminal legal process. Allowing trafficking victims to be represented by their own legal counsel minimizes re-traumatization.
- **The 3-year and 10-year bars to re-entry into the U.S. should be lifted for trafficking survivors.** Trafficking survivors who need to return home briefly to visit their families or for other reasons are often unable to do so because they are subject to the three and ten year bars to re-entry. Due to their acquiring ‘unlawful’ presence because of their lapsed or otherwise undocumented immigration status, trafficking survivors may not be permitted to re-enter the U.S. if they leave temporarily. Often, prosecutors are willing to send a trafficking survivor to their home country to visit his or her family, especially where such a visit will provide a much-needed boost to the trafficking survivor’s morale, or assurance that the family is safe—however, the current bars render this option unavailable for trafficking survivors.
- **Trafficking survivors should be granted immediate eligibility for adjustment of status to permanent residence upon approval of the T visa.** Trafficking survivors should not have to wait for 3 years to apply for legal permanent status and fully integrate into life in the U.S. The granting of a T visa sufficiently establishes the trafficking survivors need to access the protection and benefits of residence in the U.S. Requiring survivors to wait an additional 3 years serves only to increase their instability and fear.
- **The “extreme hardship” requirement for families should be removed so that all trafficking survivors are able to reunite with their families as soon as possible.** The VTVPA allows family members to come to the U.S. only if they would face extreme hardship if they are not allowed to join their trafficked family member who is in the U.S. If this requirement is not met, family members must wait 3 years until the T visa holder adjusts status to permanent residence and then an additional 5-10 years, depending upon country of origin, to be able to join their trafficked family member in the U.S. We believe that families should always be able to reunite regardless of whether the individual abroad would face extreme hardship if not permitted to join their loved one.

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