

United States Senate

WASHINGTON, DC 20510

July 15, 2019

The Honorable Kenneth Cuccinelli
Acting Director
United States Citizenship and Immigration Services
Washington, D.C. 20529

The Honorable Mark A. Morgan
Acting Director
U.S. Immigration and Customs Enforcement
Washington, DC 20536

Dear Acting Directors Cuccinelli and Morgan:

We write to express our concern regarding recent reports of increased denial rates for visas for victims of human trafficking. To help us understand the reason for these denials, we request that you provide additional information about DHS's adjudication of T visa applications.

In 2000, Congress passed the Trafficking Victims Protection Act, authored by Senator Feinstein. This bill created the "T visa" for victims of trafficking. In December 2016, only 19 percent of applications for T visas were denied. From January 2017 to March 2019, the T visa denial rate more than doubled, to 46 percent. The Trump administration has been particularly quick to deny T visas to applicants from Mexico and Central America. Denial rates for trafficking victims from these countries increased by 10 percent in a single year, from 2016 to 2017.

Given this rapid increase, please provide: (1) the total number of T visa applications and appeals that prompted a request for further evidence from 2015 through the present; and (2) the breakdown of T visa applications and denials by nationality, by quarter, from 2017 through the present. Additionally, please provide copies of all written ICE policies regarding smuggling and trafficking investigations, including policies on victims and family members. Please also provide a copy of any USCIS policy guidance regarding T visa cases involving smugglers, unaccompanied minors, and applicants from Central America.

We must ensure that families and children are afforded proper humanitarian protections under the law, including T visas. Thank you for your consideration.

Sincerely,


Dianne Feinstein
United States Senator


Catherine Cortez Masto
United States Senator



**U.S. Citizenship
and Immigration
Services**

September 30, 2019

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senator Feinstein:

Thank you for your July 15, 2019 letter regarding application of Form I-914, Application for T Nonimmigrant Status, commonly referred to as the “T visa”. U.S. Citizenship and Immigration Services (USCIS) appreciates your concern regarding adjudicative trends of T applications and remains committed to the efficient adjudication of T filings.

Your letter states that only 19 percent of T applications were denied in December 2016, and notes that the denial rate for T filings doubled to 46 percent between 2017 and 2019. The percentages you reference appear to be calculated from the USCIS quarterly data reports (available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data>). However, USCIS cautions that it is not possible to determine a “rate” of approval or denial based on the quarterly T application datasets. This is because some applications are received in one fiscal year but action is taken in a later fiscal year (that is, approved, denied, revoked, terminated, or withdrawn) thus making an analysis based solely on fiscal year approval or denial totals inaccurate.

USCIS recently published a 10-year dataset that enumerates principal T-1 applications filed from fiscal year (FY) 2008 to FY 2018, organized by nationality and status of adjudication at the time of the report. This dataset is available at:
https://www.uscis.gov/sites/default/files/files/nativedocuments/Form_I-914_Application_for_T_Nonimmigrant_Status.pdf.

Your statements regarding T application denial rates for individuals from Mexico and Central America appear to be based on this 10-year dataset. USCIS notes that because this 10-year dataset provides the outcome of the application by the year in which the application was received, not the year it was adjudicated, approval and denial rates can only be accurately calculated in the years where there are low numbers of applications filed in that year that remain pending. For applications received in FY 2016, we can conclude that the approval rate for T-1 principals was approximately 77 percent and the denial rate was 22 percent.¹

¹ At the time of the report, about 1 percent of applications were still pending.

By country, out of completed T applications received in FY 2016, principal T-1 applicants born in Mexico had a 74 percent approval rate and 26 percent denial rate. For principal T-1 applicants born in El Salvador, the approval rate was 60 percent and the denial rate was 40 percent. Finally, the approval rate for principal T-1 applicants born in Guatemala was 69 percent and the denial rate was 28 percent; and the approval rate for principal T-1 applicants born in Honduras was 71 percent and the denial rate was 27 percent.²

Although most applications from FY 2017 have been adjudicated, approval and denial rates by country will not be complete since there were still 121 applications pending adjudication at the time this dataset was pulled. 90 percent of applications filed in FY 2017 have been completed. Out of those completed applications, the overall approval rate is 71 percent and the denial rate is 29 percent. These rates may change in the future due to additional adjudications. Neither an approval nor denial rate can be accurately calculated for FY 2018 due to the number of T applications received that year that remained pending at the time this letter was prepared.

Your letter requested (1) the total number of T applications and appeals that prompted a request for further evidence from 2015 through the present; and (2) the breakdown of T applications and denials by nationality, by quarter, from 2017 through the present. We have enclosed data tables reflecting the data requested. The first table provides the total number of RFEs issued to principal and derivative T applicants and RFEs issued (7,063) between FY 2015 and July 2019. The second table provides the number of T applications by country of citizenship, by quarter from FY 2017 through July 2019. Please note that Table 2 provides the total number of receipts (that is, applications received in a fiscal year) and the total number of approvals and denials in a fiscal year. The approval or denial of a particular application may have taken place in a different fiscal year. The numbers in the approval and denial columns will not equal the total number of receipts for that fiscal year because some applications received during that timeframe are still pending an adjudicative action. As such, it is not possible to calculate an approval or denial rate for these years by country of birth.

Additionally, you requested copies of all USCIS policy guidance regarding T cases involving smugglers, unaccompanied minors, and applicants from Central America. USCIS has not issued specific guidance or instruction on the adjudication of T visa cases for applicants from Central America. All T cases are adjudicated on an individual basis with no specific instruction regarding the country of origin of the applicant.

As you know, victims of trafficking and their families can be put at risk if information related to their applications are disclosed to those who are not authorized under 8 U.S.C. § 1367 to receive that information. As an exception to this prohibition on disclosure, 8 U.S.C. § 1367(b)(6) permits disclosure of information, omitting personally identifiable information (PII),

² These do not sum to 100 percent because at the time of the report was pulled, a few applications remained pending.

The Honorable Dianne Feinstein

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to the chair and ranking members of the Senate and House Judiciary Committees for oversight purposes. To protect the identity of trafficking victims, USCIS does not publicly release data regarding filed, pending, or adjudicated applications for these benefit types when the sample size is fewer than 10, as this level of specificity may reveal the identity of victims protected under this provision. In accordance with 8 U.S.C. 1367(b)(6), we have provided an un-redacted dataset to you as a Ranking Member on the Senate Judiciary Committee. However, in keeping with longstanding USCIS policy, we have also provided a redacted dataset, which suppresses values less than 10 by nationality (country of birth) so the identity of those individuals may not be easily deduced. USCIS recommends only sharing the suppressed dataset outside of the committee to comply with obligations under 8 U.S.C. 1367.

Thank you again for your letter and interest in this important issue. Senator Cortez Masto, who co-signed your letter, will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in black ink that reads "Ken Cuccinelli II". The signature is stylized, with the first name "Ken" written in a cursive script, followed by a large "C" and "II" written in a more formal, blocky style.

Ken Cuccinelli II
Acting Director

Enclosure