

9 FAM Changes to Reflect the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

Reference Document: STATE 056532, 06/09

TO ALL DIPLOMATIC AND CONSULAR POSTS

1. On December 23, 2008, the President signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act (WWTVPA) of 2008. The Act makes several changes to nonimmigrant visa classification criteria and visa processing requirements. This cable updates affected 9 FAM notes.

2. The Foreign Affairs Manual will be amended to reflect the following changes to 9 FAM notes:

9 FAM 40.27 N1 Background

Pub. L. 110-457 has significantly changed the ground of inadmissibility in INA 212(a)(2)(H)(i) for significant traffickers in persons.

9 FAM 40.27 N2 Inadmissibility Under INA 212(a)(2)(H)

a. An alien shall be inadmissible under INA 212(a)(2)(H) on the basis of:

(1) Committing or conspiring to commit human trafficking offenses, regardless of whether in or outside the United States; or

(2) Your knowledge or reason to believe that the alien is or has been a knowing aider, abettor, assister, conspirator, or colluder in severe forms of trafficking with an individual who has engaged in activity described in (a)(1).

b. For purposes of INA 212(a)(2)(H), a human trafficking offense equates to a "severe form of trafficking in persons," which the TVPA defines as:

(1) inducing another to engage in a commercial sex act through the use of force, fraud, or coercion, or inducing an individual under the age of 18 to engage in a commercial sex act;

(2) recruiting, harboring, transporting, providing or obtaining a person for labor or services through the use of force, fraud, or coercion for the purposes of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

c. If you suspect that an alien is inadmissible under (a)(1), above, request an advisory opinion from CA/VO/L/A.

9 FAM 41.21 N6 A-3, G-5, OR NATO-7 CLASSIFICATION

9 FAM 41.21 N6.1 Aliens Entitled to A-3, G-5, or NATO-7 Classification

a. An alien who is the attendant, servant, or personal employee of an alien classified A-1 or A-2, G-1 through G-4, or NATO-1 through NATO-6 is entitled to the appropriate A-3, G-5, or NATO-7 classification. Such aliens are required to demonstrate that they are entitled to an A-3, G-5, or NATO-7 nonimmigrant classification (e.g., letter of reference from a former employer, evidence of previous employment in that sector, etc.). You must, therefore, establish the official status of the employer and the intent of both parties to enter into (or remain in) an employer-employee relationship. In cases where the domestic employee either is renewing an A-3, G-5, or NATO-7 visa or is joining an employer who has already taken up his or her assignment in the United States, post may access Protocol's records in The OFM Management Information System (TOMIS) through the Consular Consolidated Database (CCD) Cross Applications menu to verify an employer's current official status. Posts need to keep in mind that if a domestic employee is accompanying the employer to a new diplomatic assignment in the United States, Protocol may not yet be aware of the employer and so may not appear in the TOMIS database. If post has any question regarding an employer's status (e.g., name does not appear in TOMIS; appears to have been accredited for an unusual length of time), refer the case to CA/VO/L/A. Additionally, if a particular A-3, G-5, or NATO-7 application raises fraud

concerns, refer the case to the Department for further verification. (NOTE: Protocol expects to establish, during the Summer of 2009, a requirement for the employer's foreign mission or international organization to pre-notify Protocol of the intention to sponsor the alien as a domestic or personal employee. Once that requirement has been established, this note will be updated to provide that adjudication of an A-3 or G-5 application should not take place until TOMIS contains a record of the pre-notification.)

b. Consular officers are reminded that A, G, and NATO visa applicants meet the requirements of INA 214(b) by establishing entitlement to such a status. They do not need to demonstrate that they:

- (1) Are not intending immigrants;
- (2) Have a residence abroad they do not intend to abandon; or
- (3) Have compelling ties outside the United States.

c. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that an individual applying for an A-3, G-5, or NATO-7 visa is made aware of his or her legal rights under federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the visa interview, you must confirm that a pamphlet described in 9 FAM 41.21 N6.5.1 has been received, read, and understood by the applicant. You are also required to review the contents of the mandatory employment contract, as described in 9 FAM 41.21 N6.2, with the applicant.

9 FAM 41.21 N6.2 Terms and Conditions of Employment; Mandatory Employment Contracts

a. You must be satisfied that the wage to be received by the A-3, G-5, or NATO-7 applicant is a fair wage comparable to that offered in the area of employment and sufficient to overcome INA 212(a)(4) (8 U.S.C. 1182 (a)(4)). To insure that the applicant will receive a fair wage, applications for such visas must include an employment contract signed by the employer and the employee. The contract must include the following elements:

- (1) An agreement by the employer to abide by all federal, state, and local laws in the United States;
- (2) A guarantee the employee will be compensated at the state or federal minimum or prevailing wage, whichever is greater. Department of Labor (DOL) maintains an Alien Labor Certification/Occupational Employment Survey (ALC-OES) database that breaks down prevailing wage statistics by occupation and metropolitan area. This information is available on the Web on the Department of Labor's Online Wage Library & Data Center. NOTE: You must be satisfied that if any money is deducted for food or lodging, it is no more than reasonable;
- (3) Information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days;
- (4) A statement by the employee that he or she will not accept any other employment while working for the employer;
- (5) A statement by the employer that he or she will not withhold the passport, employment contract, or other personal property of the employee; and
- (6) A statement indicating that both parties understand that the employee cannot be required to remain on the premises after working hours without compensation.

b. You may encounter applications where the applicant does not submit a contract, the contract does not guarantee a fair wage or working conditions, or you have evidence that the employer will not comply with the conditions specified in the contract. In such cases, you should refuse the visa under either INA 214(b), because the applicant has not shown entitlement to nonimmigrant status under an A, G, NATO, or under INA 221(g), because the alien has failed to submit a required document. If the agreed wage falls below the minimum or prevailing wage because of deductions for food and lodging by the employer, and you conclude that the remaining wage available to the employee is insufficient to provide a reasonable incentive to continue in the A-3, G-5, or NATO-7 employment, you should also refuse the visa pursuant to 214(b). You may refuse visas for A-3, G-5, or NATO-7 applicants under any appropriate provision of law.

9 FAM 41.21 N6.5 Information Pamphlet on Legal Rights of A-3, G-5, NATO-7, H, J, and Domestic Employees

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires the Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, to develop an information pamphlet on the legal rights and available Resources for aliens applying for A-3, G-5, H, or J visas, as well as any nonimmigrant visa (such as B-1 domestic and NATO-7) issued to a personal or domestic servant who is accompanying or following to join an employer. This pamphlet is currently in development.

9 FAM 41.21 N6.5.1 Contents of Information Pamphlet

a. The contents of the information pamphlet will include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:

- (1) the nonimmigrant visa application processes, including information about the portability of employment;
- (2) the legal rights of employment or education-based nonimmigrant visa holders under federal immigration, labor, and employment laws;
- (3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
- (4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including--
 - (A) the right of access to immigrant and labor rights groups;
 - (B) the right to seek redress in United States courts;
 - (C) the right to report abuse without retaliation;
 - (D) the right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;
 - (E) the requirement of an employment contract between the employer and the nonimmigrant; and
 - (F) an explanation of the rights and protections included in the mandatory employment contract; and
- (5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including--
 - (A) anti-trafficking in persons telephone hotlines operated by the Federal Government;
 - (B) the Operation Rescue and Restore hotline; and
 - (C) a general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.

b. The pamphlet will be translated into certain foreign languages, based on the languages spoken by the greatest concentration of employment and education based nonimmigrant visa applicants. Once published and translated, the pamphlet will be posted on the Department of State website travel.state.gov and must be posted, in English and any in relevant local language that the pamphlet has been translated into, on the website of every consular post.

9 FAM 41.21 N6.5.2 Consular Officer Responsibilities

a. The WWTVPRA requires you, during the interview of an applicant for an A-3 or G-5 visa:

- (1) to confirm that the alien has received, read, and understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet;
- (2) to provide a copy of the pamphlet to the applicant if one was not received, read, or understood and orally disclose in a language that the alien understands, and offer to answer any questions that the alien may have

regarding information contained in the pamphlet as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:

(A) the legal rights of employment-based nonimmigrants under federal immigration, labor, and employment laws;

(B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and

(C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including--

(i) the right of access to immigrant and labor rights groups;

(ii) the right to seek redress in United States courts; and

(iii) the right to report abuse without retaliation.

(D) the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

NOTE: The obligation for a consular officer to provide such an oral disclosure if an applicant did not receive, read, or understand the contents of the pamphlet will apply once the Department has made the pamphlet available to posts.

b. All applicants for an A-3, G-5, or NATO-7 visa must be interviewed, regardless of whether the applicant has been issued a previous visa in the same classification to work for the same employer. The interview of an A-3, G-5, or NATO-7 applicant must be conducted outside the presence of the employer or recruitment agent.

9 FAM 41.21 N6.6 Suspension of Processing of A-3 and G-5 Applications from Certain Foreign Missions and International Organizations

a. The Secretary of State shall suspend, for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more nonimmigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions.

b. The Secretary may suspend the application of the limitation under paragraph (a) if the Secretary determines and reports to the appropriate congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.

c. All visa processing posts will be advised when the Secretary has determined that A-3 or G-5 visa processing should be suspended for a specific diplomatic mission or international organization.

9 FAM 41.22 N4.2 Qualifying for A-3 Visa

a. In order to benefit from A-3 status, the alien must be coming to the United States to perform a specific job, and must be capable of doing so, regardless of whether the alien has ever performed such a job in the past. For example, an alien with a degree in computer science who is coming to work as a domestic employee may be issued an A-3 visa if he or she clearly has the intent and ability to perform the job. However, if a consular officer believes that an applicant is presented as a domestic employee for someone in A-1 or A-2 status, but will actually work as a computer consultant for a private company, then the A-3 visa should be denied. The alien should be found ineligible under INA 214(b), as he or she has not established his or her eligibility in any nonimmigrant visa (NIV) category. Such an applicant may also be subject to a finding of ineligibility under INA 212(a)(6)(C). Similarly, an A-3 visa application on behalf of someone who has recently resided illegally in the United States, or who may have previously sought another visa status and was refused under INA 214(b), and who appears to be using the A-3 application to evade U.S. immigration requirements, should be carefully scrutinized to determine whether the applicant actually intends to take up the stated employment; however,

the previous illegal status and change to A-3 status is not a basis in itself for refusal if you believe the applicant plans to take up the stated employment.

b. You may not issue or renew an A-3 visa unless the visa applicant has executed a contract with the employer or prospective employer containing detailed provisions described below as well as in 9 FAM 41.21 Note 6.2. You must conduct a personal interview with the applicant outside the presence of the employer or any recruitment agent. During that interview you will review the contract with the applicant and ensure that the applicant fully understands the terms of the contract and has received, read, and fully understands the contents of the Department's information pamphlet regarding the alien's legal rights in the United States, as described in 9 FAM 41.21 N6.5.1 and N6.5.2.

9 FAM 41.22 N4.3 Key Questions to be Addressed in A-3 Applications

a. Several key questions the consular officer should address in cases involving A-3 applicants are:

- (1) Is the applicant capable of performing the work required?;
- (2) Are the parties concerned entering into a true employee and/or employer relationship for a reasonable period of time? i.e., can it be reasonably assumed that the applicant's background, education skills, employment history, or relationship to the prospective employer will not preclude the parties from entering into a true employee and/or employer relationship? (See 9 FAM 41.22 N4.4.);
- (3) Is the applicant otherwise fully qualified? (See 9 FAM 41.21 N6);
- (4) Will the applicant receive a fair wage by U.S. standards? Under the U.S. Fair Labor Standards Act (FLSA), all full-time, live-in domestic employees must be paid the prevailing or minimum wage per hour under federal law, and in the jurisdiction which the domestic will be employed, for all hours on duty. Under prevailing practice, live-in domestics receive room and board in addition to their salary. Although the employer is not required to pay for medical insurance, the employer is responsible for ensuring that the employee does not become a public charge while in his or her employ (See also 9 FAM 41.21 N6.2 and 9 FAM 41.22 N4.4.); and
- (5) Does the contract address all of the stipulated necessary minimum provisions outlined in 9 FAM 41.22 N4.4 below?

b. Provided the answer to each question above is yes, and the applicant is not inadmissible on independent grounds of the INA, an A-3 visa should be issued. If otherwise, the applicant should be denied the visa under INA 214(b) and/or any other appropriate section of the INA.

9 FAM 41.22 N4.4 Salary, Contracts and Employer Obligations

a. As noted above, A-3 and G-5 employees are covered by the Fair Labor Standards Act (FLSA). In each case, you must request the employer to provide a contract, in both English and a language understood by the employee, to demonstrate that the employee will receive a fair wage, and that the employee understands his or her duties and rights regarding salary and working conditions. (See also 9 FAM 41.21 N6.2.) Post must scan the employment contract and attach the scanned document to the application record in NIV.

b. The contract must/must stipulate the number of hours to be worked by the employee per week, the rate of pay (the state or federal minimum or prevailing wage, whichever is greater for every hour worked), the number of authorized holidays, vacation, and sick leave days per year, and the regular day(s) off each week. Under federal law, the rate of overtime pay need not exceed the regular hourly rate if the employee resides in the home of the employer, but state law governing overtime rate also applies and must be checked. If the employee does not reside with the employer, overtime for hours in excess of 40 hours per week must be paid at the rate of time and a half. The contract also must/must contain provisions to the effect that the employer agrees to abide by all federal, state, and local laws in the United States; and that the employer will not withhold the employee's passport, employment contract, or other personal property nor prohibit the employee from leaving the premises when the employee is not on duty; and it must provide information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days. If you request a contract and none is furnished, refuse the applicant under INA 214(b) (See 9 FAM 41.21 N6.2b). If you routinely encounter A-3 or G-5 applications that do not meet FLSA standards, contact CA/VO/L/A for assistance.

c. A-3 and G-5 applicants are subject to all ineligibilities under INA 212(a), but are not required to have a foreign residence which they have no intention of abandoning. Therefore, bona fide A-3 and G-5 applicants may not be denied as intending immigrants under INA 214(b) provided a complying, credible contract is provided. In addition, A-3 and G-5 applicants are subject to INA 222(g).

d. The employer must pay the domestic's initial travel expenses to the United States, and subsequently to the employer's onward assignment, or to the employee's country of normal residence at the termination of the assignment.

e. In accordance with INA 291, the burden of proof for A-3 or G-5 eligibility is on the applicant. You must assess the credibility of the applicant and the evidence submitted to determine qualification for an A-3 or G-5. The applicant must satisfy you that he or she will credibly engage in A-3 or G-5 activity under the contractual terms, and thereby maintain lawful status.

f. Do not issue a visa unless you can reasonably conclude that the employer will in fact provide the employee with the required wages and working conditions. You may presume that the applicant is not eligible if the employer does not carry the diplomatic rank of Minister or higher, or a position equivalent to Minister or higher. To rebut this presumption, the employer must demonstrate that he or she will have sufficient funds to comply with the FLSA, as reflected in the contract. You must deny the visa if you are not convinced the employer can in fact meet the terms of the contract. Consideration must also be given to the number of employees a particular employer may reasonably be able to pay. Note that this presumption applies in all cases in which the applicant's employer is an employee of an international organization classifiable as G-4, and it therefore will be necessary for the employer to demonstrate that he or she has sufficient funds to provide the required wages and working conditions, as such employer and position would never be of the rank of Minister or higher.

g. If an employer has had previous instances of non-compliance with contracts with A-3 or G-5 employees or has a pattern of employee disappearance or credible abuse allegations, you may presume that the applicant is not eligible for the visa and refuse it. (See 9 FAM 41.21 N6.2 (b).) To rebut this presumption, the employer and the visa applicant would have to convince you that such an outcome is not likely to recur (e.g., by the employer's establishing that he or she had had a reasonable expectation that previous employees would remain in A-3 or G-5 status, rather than suddenly cease working in the household and remain unlawfully in the United States and that the disappearances were promptly reported, and by evidence establishing that the employer and the visa applicant intend to fulfill the provisions of the contract and enter into a bona fide employer-employee relationship, and that the applicant intends to maintain A-3 or G-5 visa status while in the United States). The burden of proof remains on the applicant and the employer to establish eligibility and future compliance with all requirements.

9 FAM 41.24 N12 ISSUING G-5 VISA TO ATTENDANTS AND PERSONAL EMPLOYEES

See 9 FAM 41.21 and 9 FAM 41.22 N4.

9 FAM 41.25 N6 ISSUING NATO-7 VISA TO ATTENDANTS AND PERSONAL EMPLOYEES

a. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WTVPA) requires you to ensure that an alien applying for a nonimmigrant NATO-7 visa to be issued to a personal or domestic servant who is accompanying or following to join an employer, is made aware of his or her legal rights under federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the nonimmigrant visa interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant. (See also 9 FAM 41.21 N6 and 9 FAM 41.22 N4.)

b. The contents of the information pamphlet will include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:

- (1) the nonimmigrant visa application processes, including information about the portability of employment;
- (2) the legal rights of employment or education-based nonimmigrant visa holders under federal immigration, labor, and employment laws;
- (3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker

exploitation in the United States;

(4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including--

(A) the right of access to immigrant and labor rights groups;

(B) the right to seek redress in United States courts;

(C) the right to report abuse without retaliation;

(D) the right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;

(E) the requirement of an employment contract between the employer and the nonimmigrant; and

(F) an explanation of the rights and protections included in the mandatory employment contract; and

(5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including --

(A) anti-trafficking in persons telephone hotlines operated by the Federal Government;

(B) the Operation Rescue and Restore hotline; and

(C) a general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.

c. The WWTVPRA requires you during the interview of an alien:

(1) to confirm that the alien has received, read, and understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet;

(2) to provide a copy of the pamphlet to the applicant if one was not received, read, or understood and orally disclose in a language that the alien understands, and offer to answer any questions that the alien may have regarding information contained in the pamphlet as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:

(A) the legal rights of employment-based nonimmigrants under federal immigration, labor, and employment laws;

(B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and

(C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including--

(i) the right of access to immigrant and labor rights groups;

(ii) the right to seek redress in United States courts; and

(iii) the right to report abuse without retaliation.

(D) the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

9 FAM 41.31 N9.3-6 Consular Officer Responsibilities in Processing Applications for B-1 Personal Employees/Domestics

a. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that an alien applying for a nonimmigrant visa to be issued to a personal or domestic servant who is accompanying or following to join an employer, is made aware of his or her legal rights under federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the

time of the nonimmigrant visa interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant.

b. The contents of the information pamphlet will include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:

- (1) the nonimmigrant visa application processes, including information about the portability of employment;
- (2) the legal rights of employment or education-based nonimmigrant visa holders under federal immigration, labor, and employment laws;
- (3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
- (4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including--
 - (A) the right of access to immigrant and labor rights groups;
 - (B) the right to seek redress in United States courts;
 - (C) the right to report abuse without retaliation;
 - (D) the right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;
 - (E) the requirement of an employment contract between the employer and the nonimmigrant; and
 - (F) an explanation of the rights and protections included in the mandatory employment contract; and
- (5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including --
 - (A) anti-trafficking in persons telephone hotlines operated by the Federal Government;
 - (B) the Operation Rescue and Restore hotline; and
 - (C) a general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.

c. The WWTVPRA requires you during the interview of an alien:

- (1) to confirm that the alien has received, read, and understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet;
- (2) to provide a copy of the pamphlet if one was not received, read, or understood and orally disclose in a language that the alien understands, and offer to answer any questions that the alien may have regarding information contained in the pamphlet as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:
 - (A) the legal rights of employment-based nonimmigrants under federal immigration, labor, and employment laws;
 - (B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and
 - (C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including--
 - (i) the right of access to immigrant and labor rights groups;
 - (ii) the right to seek redress in United States courts; and
 - (iii) the right to report abuse without retaliation.

(D) the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

9 FAM 41.53 N30 Responsibilities of Consular Officers Informing Applicants of Legal Rights

a. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that all aliens applying for an H visa are made aware of their legal rights under federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the nonimmigrant visa interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant.

b. The contents of the information pamphlet will include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:

(1) the nonimmigrant visa application processes, including information about the portability of employment;

(2) the legal rights of employment or education-based nonimmigrant visa holders under federal immigration, labor, and employment laws;

(3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;

(4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including--

(A) the right of access to immigrant and labor rights groups;

(B) the right to seek redress in United States courts;

(C) the right to report abuse without retaliation;

(D) the right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;

(E) the requirement of an employment contract between the employer and the nonimmigrant; and

(F) an explanation of the rights and protections included in the mandatory employment contract; and

(5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including--

(A) anti-trafficking in persons telephone hotlines operated by the Federal Government;

(B) the Operation Rescue and Restore hotline; and

(C) a general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.

c. The WWTVPRA requires you during the interview of an alien:

(1) to confirm that the alien has received, read, and understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet;

(2) to provide a copy of the pamphlet if one was not received, read, or understood and orally disclose in a language that the alien understands, and offer to answer any questions that the alien may have regarding information contained in the pamphlet as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:

(A) the legal rights of employment-based nonimmigrants under federal immigration, labor, and employment laws;

(B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker

exploitation in the United States; and

(C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including--

(i) the right of access to immigrant and labor rights groups;

(ii) the right to seek redress in United States courts; and

(iii) the right to report abuse without retaliation.

(D) the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

9 FAM 41.62 N11 Responsibilities of Consular Officers Informing Applicants of Legal Rights

a. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA) requires you to ensure that an individual applying for a J visa is made aware of his or her legal rights under federal immigration, labor, and employment laws. This includes information on the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States. At the time of the nonimmigrant visa interview, you must confirm that a pamphlet prepared by the Department detailing this information has been received, read, and understood by the applicant.

b. The contents of the information pamphlet will include a discussion of procedural issues, legal rights, and available legal resources concerning items such as:

(1) the nonimmigrant visa application processes, including information about the portability of employment;

(2) the legal rights of employment or education-based nonimmigrant visa holders under federal immigration, labor, and employment laws;

(3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;

(4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including--

(A) the right of access to immigrant and labor rights groups;

(B) the right to seek redress in United States courts;

(C) the right to report abuse without retaliation;

(D) the right of the nonimmigrant not to relinquish possession of his or her passport to his or her employer;

(E) the requirement of an employment contract between the employer and the nonimmigrant; and (F) an explanation of the rights and protections included in the mandatory employment contract; and

(5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including--

(A) anti-trafficking in persons telephone hotlines operated by the Federal Government;

(B) the Operation Rescue and Restore hotline; and

(C) a general description of the types of victims' services available for individuals subject to trafficking in persons or worker exploitation.

c. The WWTVPRA requires you during the interview of an alien:

(1) to confirm that the alien has received, read, and understood the contents of the information pamphlet, and to offer to answer any questions the alien may have regarding the contents of the pamphlet;

(2) to provide a copy of the pamphlet to the applicant if one was not received, read, or understood and orally disclose in a language that the alien understands, and offer to answer any questions that the alien may have regarding information contained in the pamphlet as well as information described below regarding legal rights, U.S. law, and victim services. Such an oral disclosure should include:

(A) the legal rights of employment-based nonimmigrants under federal immigration, labor, and employment laws;

(B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and

(C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including--

(i) the right of access to immigrant and labor rights groups;

(ii) the right to seek redress in United States courts and

(iii) the right to report abuse without retaliation.

(D) the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.

9 FAM 41.84 VICTIMS OF TRAFFICKING IN PERSONS

9 FAM 41.84 NOTES

9 FAM 41.84 N1 BACKGROUND

Section 107 of Public Law 106-386, the Victims of Trafficking and Violence Protection Act (VTVPA) created a new nonimmigrant category (T) for aliens who are victims of a "severe form of trafficking in persons." The term has the meaning given in Section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102). Note that only the Department of Homeland Security (DHS) can place an alien, principals as well as derivatives, in this category. Consequently, a consular officer must not accept an application for a nonimmigrant visa (NIV) in the T category unless the officer has received from the Department notification that DHS has approved that alien for T status. (See 9FAM 41.84 PN1 and PN2.) The category is limited to 5,000 principal aliens per year. The law was amended by the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), Public Law 108-193, which provided age-out protection (see 9 FAM 41.84 N5.3) and public charge exemption (see 9 FAM 41.84 N5.4), and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457.

9 FAM 41.84 N4 DERIVATIVES OF T VISA HOLDERS: CONSULAR OFFICER RESPONSIBILITY

a. In order to avoid extreme hardship, eligible immediate family members of a T-1 principal alien may receive derivative T-2 (spouse) or T-3 (child) status, and, in some circumstances, T-4 (parent) or T-5 (sibling) status, to accompany or follow to join the principal alien. Children born after their parent filed an application for T-1 status may be eligible for derivative status if the parent T-1 nonimmigrant proves that he or she became the parent of the child after the application was filed. Siblings must be unmarried and under the age of 18 on the date on which the principal alien applies for T-1 status. A parent or sibling of a T-1 principal may qualify in one of two ways: based either on the principal alien's age under 21 when filing the application for T-1 status [redacted], or -- regardless of the principal alien's age -- on a determination by the Secretary of Homeland Security that the parent or sibling faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement [redacted]. Note that numerical limitations do not apply to immediate family members.

[No changes to paragraphs (b) through (e)]

[Section redacted]

[Section redacted]

