

IMMIGRATION RELIEF FOR HUMAN TRAFFICKING VICTIMS: FOCUSING THE LENS ON THE HUMAN RIGHTS OF VICTIMS†

CAROLE ANGEL, ESQ.*

I. INTRODUCTION

Human Trafficking is a horrific crime that subjects its victims to force, fraud or coercion for the purpose of sexual exploitation or forced labor.¹ The U.S. government estimates that between 14,500 and 17,500 people are trafficked into the United States each year.² Victims of trafficking are recruited, transported or sold into all forms of forced labor and servitude, including prostitution, sweatshop work, domestic labor, farming and armed combat.³ Oftentimes, victims are sold from one person to another, with the victimization progressing from one form of slavery into other types of exploitation.

To effectively address the trafficking phenomenon, policymakers must use a victim-centered approach that focuses on human rights, rather than ones that focus solely on the narrowing of immigration laws or prosecution. If anti-trafficking initiatives employ only immigration tools, such as the tightening of borders and the restricting of visas, there will be an increased demand for black market smuggling, limiting the victims' options to cross the border legally. This would

† Some of the following material was reprinted from the Trafficking Chapter written by Carole Angel for Legal Momentum's Sexual Assault Manual, edited by Leslye E. Orloff. Production of that manual was made possible by a grant from the Office on Violence Against Women, U.S. Department of Justice. Carole Angel wishes to gratefully acknowledge the contributions of Legal Momentum in the editing and collaboration of the trafficking chapter in Legal Momentum's sexual assault manual.

* Carole Angel, Esq., is Legislative Counsel to U.S. Congressman Jerrold Nadler. Ms. Angel handles Congressman Nadler's judiciary committee issues, including civil rights, civil liberties, crime, telecommunications, election law and immigration, as well as foreign affairs. Ms. Angel previously worked as a staff attorney for the Immigrant Women Program of Legal Momentum. Legal Momentum, previously NOW Legal Defense and Education Fund, is the nation's oldest women's rights legal organization. Carole has drafted and advocated for immigration provisions in the reauthorization of the Violence Against Women Act (VAWA). Carole received her law degree from the University of Maryland School of Law in May of 2005.

1. See generally U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 4-34 (2007), available at <http://www.state.gov/g/tip/rls/tiprpt/2007>.

2. *Id.*
3. *Id.*

defeat efforts to combat human trafficking by empowering the trafficker and providing for further exploitation of the victim.

Approaching human trafficking with only prosecutorial tools is similarly ineffective. This approach focuses the effort on prosecution rather than protection, potentially turning victims into disposable witnesses and diverting attention from the promotion of human rights. Worse yet, this approach often criminalizes victims, inhibiting their ability to utilize the legal system for protection or prosecution.

It is vital that legislation to combat human trafficking is crafted using a human rights lens. In particular, it is imperative that policy makers pay particular attention to the protection of women's human rights. Approximately 80 percent of trafficking victims are female, and 70 percent of those female victims are trafficked for the commercial sex industry.⁴ Emphasizing human rights when crafting public policy to combat trafficking will result in legislation that respects a victim's autonomy and provide both victim and prosecutor a wider variety of options.

This article discusses current federal law addressing human trafficking in the United States. It argues that although the law has been comprehensive in some ways, its broad scope renders it inherently limited, and exacerbates the tension of its competing legislative goals of prevention of trafficking, protection of victims and prosecution of the traffickers. Part II of this article discusses how human trafficking is defined under current United States federal law. Part III focuses on immigration relief and the human trafficking visa with a particular emphasis on how the law works collectively with communities and law enforcement to combat human trafficking. Finally, Part IV highlights some legislative changes necessary to provide appropriate relief for victims of trafficking in our communities.

II. HUMAN TRAFFICKING AND THE TRAFFICKING VICTIMS PROTECTION ACT

The Trafficking Victims Protection Act (TVPA), the centerpiece of U.S. government efforts to combat trafficking, was signed into law in 2000.⁵ It was crafted to encourage victims to come forward and identify their traffickers, with the dual purpose of protecting hu-

4. *Id.* at 8.

5. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2005), available at <http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm> (released by the Office to Monitor and Combat Trafficking in Persons (June 3, 2005)).

man rights and prosecuting those violating the law.⁶ To accomplish this, the law was built on three interdependent aspects of federal government activity to combat human trafficking: protection, prosecution and prevention.⁷

To further these goals, the TVPA expanded the crimes and penalties available to federal investigators and prosecutors pursuing traffickers and enhanced U.S. international efforts to prevent victims from being trafficked.⁸ The TVPA also provided a range of new protections and assistance for victims of human trafficking. In particular, it created a new nonimmigrant visa, the trafficking (T) visa, for victims of severe forms of trafficking.

The T visa provides a safe haven for victims by allowing them to remain in the United States if they cooperate with law enforcement.⁹ Consequently, a victim must be involved in the prosecution of trafficking in order to get the protections and immigration relief available under the law. This requirement makes it difficult for victims to access the protections afforded to them. However, when victims work with community partners and well-trained law enforcement, the TVPA can provide them with a meaningful path towards victim protection and immigration relief. The Trafficking Victims Protection Reauthorization Act of 2003 reauthorized the TVPA and expanded U.S. anti-trafficking law enforcement efforts.¹⁰ In particular, TVPRA 2003 mandated new information campaigns to combat sex tourism, added refinements to the federal criminal law and created a new civil action that allows trafficking victims to sue their traffickers in federal district court.¹¹

Congress again reauthorized and expanded the TVPA in 2005, in a further attempt to combat both international and domestic trafficking. In the international context, TVPA 2005 addressed the needs of vulnerable populations in post-conflict settings. It also expanded U.S. criminal jurisdiction for felony offenses committed by U.S. govern-

6. Trafficking Victim's Protection Act, 22 U.S.C. § 7101(a) (West 2004 & Supp. 2007) (“(a) Purposes. The purposes of this division are to combat trafficking in persons....to ensure just and effective punishment of traffickers, *and* to protect their victims.”) (emphasis added).

7. 22 U.S.C. § 7101(b).

8. *Id.*

9. Granted, to “cooperate with law enforcement” is a giant task when one knows that law enforcement can deport them. However, the victims need not obtain the imprimatur of law enforcement; instead, they can show secondary evidence demonstrating that they have in some way assisted or tried to contact law enforcement in order to begin accessing relief.

10. G. Soderlund, *Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition*, 17 NWSA J. 64-87 (2005).

11. *Id.*

ment personnel and contractors abroad to ensure criminal accountability for those involved in human trafficking activities.¹² In the domestic context, it expanded efforts to prevent the trafficking of U.S. citizens and nationals.

Trafficking protections were also enhanced under the Violence Against Women Act (VAWA) reauthorization of 2005, which acknowledged the profound impact that trafficking has on the dignity of individuals and the disparate impact on women throughout the world. Whereas previous approaches had focused on a justice model, the VAWA served as an important example of using the human rights and women's rights focus in combating human trafficking.

VAWA effectively used this human rights approach by allowing trafficking victims whose physical or psychological trauma impedes their ability to cooperate with law enforcement to seek a waiver of the compliance requirement.¹³ VAWA 2005 also extended the duration of the T visa for up to four years with the option to extend year by year if law enforcement personnel certify that such an extension is necessary to assist in the criminal investigation or prosecution,¹⁴ acknowledging the realistic needs of the victim and law enforcement. VAWA 2005 went even further, and extended protections to trafficking victims' family members living abroad by no longer requiring family members who receive T visas to demonstrate a showing of extreme hardship, as was previously required.¹⁵

Finally, VAWA 2005 improved access to permanent residency for trafficking victims. Prior to VAWA, it was more difficult for trafficking victims to qualify for residency status because they suffered penalties for being unlawfully present. Now VAWA provides trafficking victims with an exception to this penalty if the trafficking itself was at least one central reason for their unlawful presence.¹⁶ Additionally, VAWA 2005 allows some trafficking victims earlier access to permanent residency status by allowing continued presence to count towards the three-year residence requirement, and giving the Department of Homeland Security (DHS) the discretion to reduce the three year wait upon receipt of certification that law enforcement officials.¹⁷

12. VITAL VOICES GLOBAL PARTNERSHIP, TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT BECAME LAW, *available at* http://www.vitalvoices.org/desktopdefault.aspx?page_id=300 (last visited Aug. 20, 2007).

13. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 § 801(a), 119 Stat. 2960, 3053-54 (codified at 8 U.S.C. § 1101 (2005)).

14. *Id.* § 821(a).

15. *Id.* § 801(a)(2).

16. *Id.* § 802.

17. *Id.* § 803(a).

This legislation is a good example of how policy makers can take into consideration the human rights of victims, rather than punishing them further for situations which are oftentimes beyond their control, while concurrently supporting the goals and needs of law enforcement.

A. Human Trafficking as Defined Under the TVPA

The TVPA provides protection to those victims who have experienced a “severe form of trafficking.”¹⁸ “Severe form of trafficking” is defined by the TVPA as:

(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 an 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.¹⁹

Thus, a trafficking victim must make three showings to be defined as a victim of a “severe form of trafficking” under the TVPA: the person must show that he or she is a victim of a *process* involving the “recruiting, harboring, moving, or obtaining of a person” *by* “force, fraud, or coercion” *for the purposes of* involuntary servitude, debt bondage, slavery or the sex trade. The statutory definition of “fraud or coercion” includes:

(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.²⁰

In addition, DHS had indicated that it will recognize psychological coercion as noted under the preamble to the T visa regula-

18. Trafficking Victim’s Protection Act, 22 U.S.C. § 7102(8) (West 2004 & Supp. 2007). *See also id.* § 7102(13) (defining “victim of a severe form of trafficking”).

19. *Id.* § 7102(8) (defining “severe forms of trafficking”).

20. *Id.* § 7102(2).

tions,²¹ although the regulations themselves cite authority that limits consideration of psychological coercion.²²

Thus, the TPVA defines human trafficking more broadly than normal conceptions of sex trafficking or other types of human trafficking.²³ However, a victim must meet all three elements in the TVPA definition in order to obtain the privileges available under the law, although there may be other remedies available to the victim of such a crime. Although this statutory definition, and the necessity to prove that one has experienced a “severe form of trafficking” appears to be quite limiting in scope, good advocacy and counsel can nonetheless ensure that victims enjoy the protection available to them under the law.

B. Distinction: Trafficking vs. Smuggling

The preamble to the first set of regulations on the trafficking provisions discusses the difference between smuggling and trafficking.²⁴ Oftentimes the terms are used interchangeably, but distinct differences exist under the law. In short, trafficking is a crime or violation against a person, while smuggling is a crime against the state.²⁵

Technical distinctions between being smuggled and being trafficked are determined by the way in which an individual is brought across a border or in the way that the individual is subsequently treated upon arrival in the United States. An individual is smuggled when he or she pays another person to transfer him or her across a border. If this person is then trapped by the smuggler for other purposes, such as debt or actual bondage, then he or she is treated under the law as a trafficking victim. Smuggling does not involve coercion (instead, it often involves a consensual contract) and is the facilitated illegal entry of a person from one country to another.²⁶ Conversely, trafficking contains the element of coercion or fraud (arguably an individual cannot con-

21. *See id.* § 7102(2)(B). *See also* New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 Fed. Reg. 4783, 4786 (2002).

22. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(a) (2007) (defining “involuntary servitude”) (citing *United States v. Kozminski*, 487 U.S. 931, 952 (1988)).

23. Additionally, the definition of commercial sex acts under this law is also very expansive. As a result, if one provides a commercial sex act in return for shelter or food, then he or she is a trafficking victim under the law. 22 U.S.C. § 7102(3).

24. Protection and Assistance for Victims of Trafficking; Interim Rule, 66 Fed. Reg. 38513, 38515 (2001).

25. *Id.*

26. *Id.*

sent to his or her own enslavement), where the individual is subsequently exploited.²⁷

The distinction between these two terms significantly impacts the way that an individual will be treated under the law. While someone who is trafficked is viewed as a victim under the law and is afforded protections to defend the individual's human rights, a person who is smuggled is treated as a criminal and could face legal action.²⁸

III. IMMIGRATION RELIEF AND THE HUMAN TRAFFICKING VISA

Identifying a victim can be the largest hurdle to overcome in accessing immigration and other relief under the trafficking law. Therefore, access to the T visa requires law enforcement training and community education so that individuals are identified as victims rather than as criminals. It is imperative that advocates and law enforcement fully understand the eligibility requirements that a victim must meet to identify as a victim under the law and be otherwise eligible for immigration relief.

A. *The Trafficking (T) Visa*

The TVPA created the T visa to both assist law enforcement in prosecuting traffickers and by protecting victims through access to immigration relief and other federal benefits. The T visa allows victims of severe forms of trafficking to live, receive services and work legally in the United States for up to four years,²⁹ after which they are eligible to apply for permanent resident status.

To be eligible for a T visa, a non-citizen must demonstrate that she or he: (1) "is or has been a victim of a severe form of trafficking"; (2) is "physically present" in the United States on account of trafficking; (3) "has complied with any reasonable request for assistance" in investigating or prosecuting trafficking (if the individual is 15 years of age or older); and (4) "would suffer extreme hardship involving unusual and severe harm upon removal."³⁰

27. *Id.*

28. *Id.*

29. 8 U.S.C. § 1184(o)(7)(A) (West 2004 & Supp. 2007). Application for the T visa is an essential prerequisite for services funded by the Office of Refugee Resettlement.

30. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(b) (2007). If the INS has "substantial reason to believe" that an individual has committed an act representing a severe form of trafficking, then that individual is ineligible. *Id.* § 214.11(c).

T visa applicants can also satisfy this requirement by showing that the DHS granted continued presence to the victim based on the trafficking by providing a federal law enforcement agency (LEA) endorsement,³¹ or by providing sufficient credible secondary evidence.³² The documents from a DHS grant of continued presence are primary evidence of victim status.³³ The regulations provide a non-exhaustive list of secondary evidence that focuses on prosecutorial evidence, but notes that petitioners may submit “affidavits of other witnesses.”³⁴ Such documentation can be critical for a trafficking victim who has been victimized in the United States and who is away from his or her family or home country. To such victims, a T visa is oftentimes the first step in the transition from victim to survivor.

B. Physically Present on Account of Trafficking

In order to receive a T visa, a victim of a severe form of trafficking, as defined earlier in this chapter, must demonstrate that he or she is physically present in the United States on account of the trafficking. The regulations provide some guidance for this requirement, stating that an applicant must show that he or she is either: (1) currently being subjected to trafficking, (2) was “recently liberated” from such trafficking, or (3) is present in the United States because of past trafficking and his or her continued presence in the United States is “directly related to the original trafficking in persons.”³⁵

For victims who manage to escape on their own, without federal law enforcement assistance, this requirement means that they must show that they did not have a clear chance to leave the United States in the time between escaping their traffickers and receiving assistance from a LEA, which is a heavy burden on the victim.³⁶ Children under fifteen years of age are not required to meet this standard.³⁷ To demonstrate this requirement, applicants should rely heavily on the regula-

31. An LEA is defined as a Federal law enforcement prosecuting agency, including but not limited to, the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS), the United States Attorneys’ Offices, the Department of Justice’s Civil Rights and Criminal Divisions, the United States Marshals Service, and the Department of State’s Diplomatic Security Service. *Id.* § 214.11(a).

32. *Id.* § 214.11(f).

33. *Id.* § 214.11(f)(2).

34. *Id.* § 214.11(f)(3).

35. *Id.* § 214.11(g).

36. *Id.* § 214.11(g)(2).

37. Primary evidence of age is a certified copy of their birth certificate, passport or certified medical opinion. *Id.* § 214.11(h)(3).

tions' non-exhaustive list of "circumstances attributable to the trafficking in persons situation," such as "trauma, injury, lack of resources, or travel documents that have been seized by the traffickers."³⁸

C. Compliance with a Reasonable Request for Assistance with Investigations or Prosecutions

In order to receive a T visa, a victim must also show that she or he has complied with a reasonable request for assistance by law enforcement regarding the investigation or prosecution of the trafficker. Many applicants initially cooperate with state or local law enforcement officers, whose endorsements should satisfy the statutory requirements similar to a federal law enforcement endorsement.

The Law Enforcement Agency (LEA) endorsement is evidence of the applicant's reasonable compliance with a request. The LEA endorsement is not a mandatory part of the T visa application, but applicants are strongly encouraged to provide an endorsement. If the applicant does not provide an LEA endorsement, she or he must provide evidence that a good faith attempt was made to obtain an endorsement. In order to be eligible for the T visa, an applicant must demonstrate that, at a minimum, she or he has been in contact with an LEA regarding the acts that constitute a severe form of trafficking in persons.³⁹ Children under fifteen years of age need not meet this requirement to cooperate, but must prove their age. Primary evidence of age is a certified copy of a birth certificate, passport or certified medical opinion.⁴⁰ Secondary evidence must comply with regulations.⁴¹

Applicants may also show that such requests were not reasonable.⁴² The reasonableness of a request depends on the "totality of the circumstances."⁴³ This assessment examines "general law enforcement and prosecutorial practices, the nature of the victimization, and the specific circumstances of the victim, including fear, severe traumatization (both mental and physical) and the age and maturity of young victims."⁴⁴ An example of a potentially unreasonable request is asking a victim to wear a wire and to meet with the trafficker. This type of re-

38. *Id.* § 214.11(g)(2).

39. *See* New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 67 Fed. Reg. 4783, 4799 (2002).

40. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(h)(3) (2007).

41. *Id.* § 214.11(h)(2).

42. *Id.* § 214.11(a) (defining "reasonable request for assistance").

43. *Id.*

44. *Id.*

quest could be unreasonable if it would put the victim in a dangerous position, which could result in revictimization and traumatization.

Using the T visa as leverage for manipulating trafficking victims harms the victims and undermines Congressional intent. Victims will not avail themselves of the protections of the criminal justice system if doing so will result in further victimization. Any request that subjects a trafficking victim to further victimization, whether at the hands of the trafficker or at the hands of the criminal justice system, is unreasonable and is a violation of the victims' human rights.

As discussed earlier, VAWA 2005 provided a limited waiver of law enforcement cooperation for those trafficking victims whose physical or psychological trauma impedes their ability to cooperate. The burden of proof however, remains on the victim.⁴⁵ Evidence of physical trauma can be provided through photographs of bruises and injuries, police reports, medical reports and affidavits by witnesses. Likewise, evidence of psychological trauma can be provided through medical reports or affidavits by medical personnel. If DHS believes an applicant has not complied with a reasonable request for assistance, DHS must then contact the LEA.⁴⁶ Secondary credible evidence is similar to that for proving the applicant is a victim, such as trauma, and focuses on why the applicant does not have an LEA endorsement.

D. Extreme Hardship

Finally, an applicant for a T visa must demonstrate that she or he will suffer extreme hardship if a T visa is not granted. Extreme hardship requires proof of an "unusual and severe harm."⁴⁷ Hardship experienced by individuals other than the victim is irrelevant,⁴⁸ and "current or future economic detriment, or the lack of, or disruption to, social or economic opportunities" is not sufficient.⁴⁹ In addition to traditional extreme hardship factors, DHS considers factors associated with the trafficking context, which applicants should describe and document. No particular factor guarantees a finding of extreme hardship.⁵⁰ The non-exhaustive list of such factors includes:

45. *See supra* note 13.

46. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(h)(1) (2007).

47. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(i)(1) (2007).

48. *Id.* § 214.11(i)(2).

49. *Id.* § 214.11(i)(1).

50. *See id.* § 214.11(i)(2).

(i) [t]he age and personal circumstances of the applicant; (ii) serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country; (iii) [t]he nature and extent of the physical and psychological consequences of severe forms of trafficking in persons; (iv) [t]he impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection; (v) [t]he reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant could be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons; (vi) [t]he likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant; (vii) [t]he likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and (viii) [t]he likelihood that the applicant's individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.⁵¹

As with its consideration of VAWA extreme hardship in the past, DHS will evaluate each case on its own merits⁵² and consider all credible evidence submitted, including relevant country condition reports and any other public or private sources of information.⁵³

51. *Id.* § 214.11(i)(1).

52. Under the proposed legislation changes in H.R. 3887, TVPRA 2007, there would be greater discretion in determining whether extreme hardship exists. The Secretary of Homeland Security, in consultation with the Attorney General and relevant investigators, prosecutors, and individuals responsible for working with victims and witnesses, will have the option to consider whether the country to which the alien is likely to be removed can adequately address security concerns and the mental and physical health needs of a victim or the derivative family member.

53. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(i)(1) (2007).

E. T Visa Duration and Adjustment to Lawful Permanent Residency

VAWA 2005 extended the duration of the T visa for up to four years, at which time T visa holders are eligible to apply for adjustment to lawful permanent residence.⁵⁴ A T visa holder must apply for adjustment of status within 90 days of the visa's expiration.⁵⁵ Those who file within this period retain T status until DHS adjudicates their adjustment.⁵⁶

Applicants must meet a minimum requirement of the following to adjust their immigration status to a lawful permanent resident: (1) physical presence for a continuous period of at least three years; (2) "good moral character"; and (3) compliance with any "reasonable request for assistance" in investigating or prosecuting traffickers or (4) demonstration that he or she would "suffer extreme hardship involving unusual and severe harm" if removed.⁵⁷

IV. PROPOSED LEGISLATIVE CHANGES

There are numerous areas of the law that should be refined in the next reauthorization of the TVPA to ensure a human rights focus that provides trafficking victim with access to appropriate relief. On December 4, 2007, the U.S. House of Representatives passed H.R. 3887, "The Wilberforce Act", again reauthorizing the TVPA. While the bill has not yet passed the Senate, there are some key legislative changes that have begun to be addressed.

The most obvious legislative need is to remove the requirement that the victim cooperate with law enforcement in order to receive a trafficking visa. Instead, legislation should focus on providing relief for an individual who is a victim in the United States of a heinous crime. While VAWA 2005 provided a waiver and the House-passed TVPA 2007 reaffirms the waiver if an individual is unlikely or unable to cooperate with such a request due to physical or psychological trauma, the waiver is limited. A better approach would be to provide protection and services to the victim first, and only then should the focus shift to cooperation with prosecution, rather than making services

54. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 § 821(a), 119 Stat. 2960, 3062 (codified at 8 U.S.C. § 1184 (2005)). See also 8 U.S.C. § 1255(l)(1) (West 2004 & Supp. 2007).

55. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(p)(2) (2007).

56. *Id.*

57. 8 U.S.C. § 1255(l)(1) (West 2004 & Supp. 2007).

contingent on such cooperation. This victim-focused approach would help victims by reducing their isolation and vulnerability to future victimization.

Another legislative change needed to keep the TVPA victim-centered is to provide advance parole to the family members of victims. Under current law, T visa applicants can apply for family members on their primary application as derivative applicants. T derivative status can be given to spouses and children of T applicants.⁵⁸ Parents of T applicants under the age of 21 may also be eligible for T derivative status. VAWA 2005 eliminated the previous requirement that family members demonstrate extreme hardship. The House-passed TVPA 2007 would allow the Secretary of Homeland Security to grant parole for derivatives of trafficking victims upon written request by a law enforcement official.

Modeled after the VAWA 2000 protection offered to children on VAWA cancellation of removal grantees, advance parole for trafficking victim's family members would ensure that derivatives immediately join their family members in the U.S. If it is determined that a family member would meet the conditions for approval for a T visa as a family member of the trafficking victim, the family member could be provided advance parole into the U.S. to join and support their family member who was trafficked in the U.S. Advance parole would help remove a tool of coercion that is used by traffickers over the victims, namely the threat to hurt the victim's family in their home country. This approach would make it more likely that victims come forward and help with prosecutions. Additionally, victims' family members, including children, would be protected from becoming victims of the traffickers.

The requirement to prove good moral character to adjust a T visa holder's status to a lawful permanent resident is another legislative hurdle that has been addressed in the House-passed TVPA 2007. The requirement of good moral character under the trafficking law can be somewhat unclear, but generally means that a person cannot have been prosecuted for an aggravated felony. Under immigration law, the definition of aggravated felony is sweeping, and serves as a statutory bar to adjustment of status to lawful permanent residence. An individual who commits even a petty theft that is punishable by imprisonment

58. Alien Victims of Severe Forms of Trafficking in Persons, 8 C.F.R. § 214.11(o) (2007). Note that T visa regulations do not allow for petitioning by victims for abusers as family members. An individual who was granted a T visa may not file an application on behalf of the person who committed the trafficking against the individual, which established the individual's eligibility for the T visa.

for one year would thus be barred from adjusting to lawful permanent residency under the sweeping definition of “aggravated felony.”

Although the House-passed TVPA 2007 does not provide such a broad legislative fix, it does provide one remedy to this expansive definition, by allowing the Secretary of Homeland Security to waive the requirement of “good moral character” at adjustment for trafficking victims if they can prove that their failure to meet the requirements for “good moral character” was caused by, or was incident to, their victimization. Many trafficking victims intersect with the criminal justice system because they are forced into prostitution, drug smuggling, or other criminal acts as part of the trafficking, including assaulting their own traffickers. The victim’s involvement in the criminal activity is often directly related to the victimization, yet this activity could potentially bar a victim from becoming a lawful permanent resident. A waiver is a just and humanitarian legislative panacea, consistent with congressional intent to provide for immigration and humanitarian relief due to the individual’s victimization in the United States.

V. CONCLUSION

Legislation addressing human trafficking in the United States has proven to be both comprehensive and inherently limited due to the interplay of the statutory bars and the requirement that isolated trafficking victims cooperate with law enforcement, who the victims often view with fear based on their own worries of prosecution or deportation. The TVPA enhanced three interdependent aspects of federal government activity to combat trafficking in persons: protection, prosecution, and prevention.⁵⁹ While the comprehensive nature of the law works to solve the human trafficking problem through multiple avenues, the interplay between community, law enforcement and the victim can create a legal web with numerous holes. Future legislative solutions should continue to work within this framework, but employ the legislative solution from a human rights perspective, and ensure that the lens is fully focused on the needs and protections of the human trafficking victim.

59. See *supra* note 7.