

trafficking in persons". The TVPA in section 103(8) defines a "severe form of trafficking in persons" as either: (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. Family members of victims may also be granted T status if the Secretary for Homeland Security has determined that granting such status would avoid extreme hardship. Because under the TVPA principal applicants for T status must be in the United States, American Samoa or the Commonwealth of Mariana Islands, or at a port of entry thereto, consular officers will not be issuing visas to principal (T1) aliens. Therefore, this rule only concerns visa issuance to derivative family members (T2, T3 or T4).

Who Qualifies for a "T1" Visa?

The Department of Justice regulation published January 31, 2002 [67 FR 4784] describes in detail how an alien can qualify for T1 status under 101(a)(15)(T) of the Immigration and Nationality Act (INA), as added by the TVPA. In addition to meeting the definition of "victim", an alien whom the Secretary for Homeland Security has identified as a "victim" must also be: (1) Physically present in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a port of entry thereto on account of trafficking in such persons; (2) if 15 years of age or older, must have complied with any reasonable request for assistance to law enforcement in the investigation or prosecution of acts of trafficking; and (3) must be likely to suffer extreme hardship involving unusual and severe harm upon removal.

Does T Nonimmigrant Status Apply to Relatives?

An alien granted T1 status may also seek derivative status for certain family members who are accompanying or following to join the alien if he or she can demonstrate that the removal of those family members from the United States (or failure to admit the family members to the United States) would result in extreme hardship. In such cases, the Secretary for Homeland Security may, if it is necessary to avoid extreme hardship, permit the spouse, children and, if the principal alien is

under age 21, parents to accompany or follow to join the principal alien.

What Is the Validity of A T2, T3 or T4 Visa?

A T2, T3, or T4 visa may be issued for a maximum period of three years to run concurrently with the validity period of the T1. The derivative's status cannot be issued for a period that extends beyond the validity period of the principal's T1 status.

Are T Visa Applicants Subject to the Grounds of Ineligibility Under the INA?

T visa applicants are subject to all grounds of inadmissibility under INA 212(a). An alien found inadmissible under INA 212(a) may not be granted T nonimmigrant status unless the ground of inadmissibility is waived under either INA 212(d)(3) or INA 212(d)(13). Additionally, the TVPA creates a new ground of inadmissibility, INA 214(n), if there is substantial reason to believe that the alien has committed a severe form of trafficking in persons. Inadmissibility under INA 214(n) may not be waived.

Regulatory Analysis and Notices

Administrative Procedure Act

The publication of this rule as an interim rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). Publication of this regulation as an interim rule will expedite implementation of TVPA, which took effect on October 28, 2000. The expeditious promulgation of these regulations provides for protection and assistance to victims of severe forms of trafficking in persons and their close family members, and delay in issuing these regulations would be contrary to the public interest.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

■ In view of the foregoing, the Department amends 22 CFR as follows:

PART 41—[AMENDED]

- 1. The authority citation for part 41 continues to read as follows: 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801.
- 2. Part 41 is amended by adding a new section 41.84 to read as follows: