

## Q&A: T-Visa Adjustment of Status & the Public Charge Ground of Inadmissibility

May 2, 2019

*By the AILA VAWA, U, & T Committee and the Coalition to Abolish Slavery & Trafficking (CAST)*<sup>1</sup>

This Q&A was created to provide instruction to stakeholders on how to navigate any confusion about T-visa holders' exemption from the public charge ground of inadmissibility at the adjustment of status (AOS) stage. **Although we have not seen adjudicatory problems around this issue**, we have provided concrete practice tips in the event USCIS makes a determination contrary to existing law.

### **Q. Does the public charge inadmissibility apply to T-visa holders applying for AOS?**

**A.** No. The Trafficking Victims Protection Act of 2000 (TVPA 2000) explicitly provided trafficking victims access to public benefits “to the same extent as” refugees.<sup>2</sup> To further clarify its intent, through the Violence Against Women Act of 2013 (VAWA 2013), Congress amended the public charge ground of inadmissibility to include INA § 212(a)(4)(E)(iii), which explicitly exempts from the ground of inadmissibility any “qualified alien” described in 8 U.S.C. § 1641(c).<sup>3</sup> That provision, in turn, defines “qualified alien” to include a T-visa holder.<sup>4</sup> Thus, a T-visa holder applying for AOS is not subject to the public charge ground of inadmissibility.

### **Q. What is the confusion around this issue?**

**A.** Although Congress exempted T-visa holders from the public charge ground of inadmissibility pursuant to INA § 212(a)(4)(E)(iii), the T-visa AOS waiver statute (INA § 245(l)(2)(A)) and regulation (8 CFR § 212.18(b)(2)) have not yet been updated to conform

---

<sup>1</sup> Special thanks to AILA VAWA U & T Committee members Kyle Dandeleit and Morgan Weibel and Carolyn Kim of CAST.

<sup>2</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1475 (2000) § 107(b)(1)(A); *see also* INA § 209(c) (exempting refugees from the public charge ground of inadmissibility at the AOS stage).

<sup>3</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, Section 804, 127 Stat. 111 (2013).

<sup>4</sup> *See* 8 USC § 1641(c)(4) (2008) (defining “qualified alien” to include, among other categories, “an alien who has been granted nonimmigrant status under section 1101(a)(15)(T) of this title”); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, Section 211(a)(3), 122 Stat. 5044 (2008) (implementing this statutory change).

This was produced in part by the Coalition to Abolish Slavery and Trafficking under 2018-VT-BX-K014, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this document are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

with this statutory exemption.<sup>5</sup> Due to inconsistencies in existing guidance,<sup>6</sup> some practitioners and adjudicators may incorrectly assume the public charge ground of inadmissibility continues to apply to T-visa holders at the AOS stage. For this reason, it is essential that practitioners working on T-visa AOS applications understand the legislative framework to clarify any misunderstanding that may arise.

## **Q. What does the law actually say?**

**A.** In TVPA 2000,<sup>7</sup> Congress recognized the importance of trafficking survivors' accessing crucial public benefits to be able to recover and stabilize from their trafficking victimization. Specifically, through TVPA 2000, Congress explicitly provided T-visa applicants and T-visa holders access to public benefits to the same extent as refugees.<sup>8</sup>

However, after TVPA 2000 was enacted, Congress realized that human trafficking survivors were still encountering barriers to accessing public benefits. In response, Congress codified its intent for human trafficking survivors to access public benefits without fear of penalty by creating two statutory exemptions to the public charge ground of inadmissibility for trafficking survivors:

1. The Trafficking Victim Protection Reauthorization Act of 2003 amended INA § 212(d)(13) to explicitly exempt trafficking survivors from the public charge ground of inadmissibility at the time they are applying for a T-visa.<sup>9</sup>
2. As explained above, VAWA 2013 amended INA § 212(a)(4) to explicitly exempt T-visa holders from the public charge ground of inadmissibility,<sup>10</sup> including when they are applying for AOS.

---

<sup>5</sup> See INA § 245(l)(2)(A) (2009) (“[I]f the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary of Homeland Security, in the Attorney General’s discretion, may waive the application of [INA § 212(a)(4)].”); 8 CFR § 212.18(b)(2) (2009) (“If an applicant is inadmissible under [INA § 212(a)(4)], USCIS may waive such inadmissibility if it determines that granting a waiver is in the national interest.”).

<sup>6</sup> See, e.g., Inadmissibility on Public Charge Grounds, 83 Fed. Reg. 51,114, 51,153 (Oct. 10, 2018) (to be codified at 8 CFR pt. 103, 212, 213, 214, 245 & 248) (stating that the public charge ground of inadmissibility “only does not apply at the [T] nonimmigrant status stage,” but that “a waiver is available for T nonimmigrant adjustment applicants”); Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 81 Fed. Reg. 92,266, 92,284 (Dec. 19, 2016) (codified at 8 CFR pt. 212, 214, 245 & 274a) (“[B]ecause INA section 212(a)(4) (public charge), 8 U.S.C. 1182(a)(4), does not apply to an applicant for T nonimmigrant status (but would apply at the time of adjustment of status to lawful permanent resident), see INA section 212(d)(13)(A), 8 U.S.C. 1182(d)(13)(A), no waiver of that ground is necessary.”). To the extent that the final public charge rule states that T-visa holders are subject to the public charge ground of inadmissibility, this rule would violate INA § 212(a)(4)(E)(iii) and would likely invite litigation.

<sup>7</sup> Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1475 (2000).

<sup>8</sup> *Id.* § 107(b)(1)(A) (“[A]n alien who is a victim of a severe form of trafficking in persons shall be eligible for benefits and services under any Federal or State program or activity . . . to the same extent as an alien who is admitted to the United States as a refugee under [INA § 207].”); see also INA § 209(c) (exempting refugees from the public charge ground of inadmissibility at the AOS stage).

<sup>9</sup> Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, Section 4(b)(4), 117 Stat. 2879 (2003).

<sup>10</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, Section 804, 127 Stat. 111 (2013) (amending INA § 212(a)(4) to state that the public charge ground of inadmissibility “shall not apply to an alien who . . . is a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)).”); 8 U.S.C. § 1641(c)(4) (2008) (“For purposes of this chapter, the term ‘qualified alien’ includes . . . an alien who has been granted nonimmigrant status under section

Thus, congressional intent was always to exempt both T-visa applicants and T-visa holders from the public charge ground of inadmissibility, and Congress has now clearly codified this intent at INA § 212(d)(13) (applicable to trafficking survivors applying for a T-visa) and INA § 212(a)(4)(E)(iii) (applicable to T-visa holders applying for AOS). For this reason, T-visa holders applying for AOS are statutorily exempt from the public charge ground of inadmissibility set forth at INA § 212(a)(4).

**Q. How does this impact my practice?**

**A. It is not necessary for practitioners to file I-601 waivers for public charge at the AOS phase for T-visa holders.** As mentioned previously, we have NOT seen any adjudicatory trends indicating that USCIS has shifted its interpretation and is subjecting T-visa holders to the public charge ground of inadmissibility. Indeed, the Vermont Service Center continues to grant AOS to T-visa holders without a waiver for the public charge ground of inadmissibility or any further argument. If you nonetheless receive a Request for Additional Evidence (RFE) or Notice of Intent to Deny (NOID) for a T-visa holder's failure to request a waiver for public charge at the AOS stage, please contact [CAST Training & Technical Assistance \(http://bit.ly/CASTTaForm\)](http://bit.ly/CASTTaForm) and AILA's VAWA, U, & T Committee immediately.

---

1101(a)(15)(T) of this title or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.”).