



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Program

DETECTING POSSIBLE VICTIMS OF TRAFFICKING

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Program*

DETECTING POSSIBLE VICTIMS OF TRAFFICKING

Training Module

MODULE DESCRIPTION:

This module provides guidelines for adjudicating requests for benefits by victims of trafficking. Issues addressed include indicators that may demonstrate an individual is a victim of trafficking, specific assistance and benefits available to victims of trafficking as well as guidelines for sensitive interview techniques.

TERMINAL PERFORMANCE OBJECTIVE(S)

You will be able to assess whether an interviewee is a victim of trafficking and articulate whether the trafficking-related experience relates to the benefit being sought, and where appropriate, provide trafficking-specific information and/or assistance to the interviewee.

ENABLING PERFORMANCE OBJECTIVES

1. Define the components of human trafficking.
2. Distinguish between human trafficking and human smuggling.
3. Discuss factors that may indicate that an interviewee has been or is currently a victim of human trafficking.
4. Summarize the rights and forms of immigration relief that may be available to a trafficking victim.
5. Identify factors that may inhibit a victim's ability to fully present his or her claim for protection.
6. Analyze substantive issues related to the past persecution and well – founded fear of persecution specific to victims of trafficking.
7. Describe possible issues affecting benefit eligibility for trafficking victims and traffickers.

INSTRUCTIONAL METHODS

- Interactive Presentation
- Practical Exercises

METHOD(S) OF EVALUATION

Written exam
Practical exercise exam

REQUIRED READING

- 1.
- 2.

[Required Reading – International and Refugee Adjudications](#)

[Required Reading – Asylum Adjudications](#)

ADDITIONAL RESOURCES

- 1.
- 2.

[Additional Resources – International and Refugee Adjudications](#)

[Additional Resources – Asylum Adjudications](#)

CRITICAL TASKS

Task/ Skill #	Task Description
ILR12	Knowledge of polices and procedures for processing claims from victims of trafficking (3)
ITK4	Knowledge of strategies and techniques for conducting non-adversarial interviews (e.g., question style, organization, active listening) (4)
ITK5	Knowledge of strategies and techniques for communicating with survivors of torture and other severe trauma (4)
RI6	Skill in identifying information trends and patterns (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
IR2	Skill in interacting with individuals who have suffered trauma (e.g., considerate, non-confrontational, empathetic) (4)
IR5	Skill in persuading others and gaining cooperation (4)
IR7	Skill in collaborating and coordinating with external stakeholders (4)
SCM1	Skill in maintaining professional demeanor in stressful situations (e.g., potentially dangerous encounters, emergency situations, threats to personal safety) (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/2012	Entire Lesson Plan	Lesson Plan published	RAIO Training
6/16/2014	3.4.3 Human Trafficking Distinguished from Smuggling	Changed “illegal alien” to “undocumented alien” and added three hyperlinks to the footnote on page 24	LG, RAIO Training
6/5/2015	Asylum supplement	Removed outdated sample assessment	RAIO Training
11/27/2015	Throughout document; section 2.2.2, TVPA/TVPRA, section 3.5.2, T visa, section 3.5.3, U visas, ASM supplement	Corrected links; updated references to TIP report for 2015; added references to confidentiality protections for T/U visa applicants and changes from 2013 VAWA/TVPRA reauthorization; updated AAPM language in ASM supplement	RAIO Training
12/20/2019	Entire Lesson Plan	Minor edits to reflect changes in organizational structure of RAIO; no substantive updates	RAIO Training

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Throughout this training module, you will come across references to adjudication-specific supplemental information located at the end of the module, as well as links to documents that contain adjudication-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to the adjudications you will be performing.

For easy reference, supplements for international and refugee adjudications are in pink and supplements for asylum adjudications are in yellow.

You may also encounter references to the legacy Refugee Affairs Division (RAD) and the legacy International Operations Division (IO). RAD has been renamed the International and Refugee Affairs Division (IRAD) and has assumed much of the workload of IO, which is no longer operating as a separate RAIO division.

1 INTRODUCTION & OVERVIEW

“This year’s [Report](#) places a special emphasis on human trafficking in the global marketplace. It highlights the hidden risks that workers may encounter when seeking employment and the steps that governments and businesses can take to prevent trafficking, including a demand for transparency in global supply chains.

The bottom line is that this is no time for complacency. Right now, across the globe, victims of human trafficking are daring to imagine the possibility of escape, the chance for a life without fear, and the opportunity to earn a living wage.”

John F. Kerry, former U.S. Secretary of State¹

As an officer in the RAIO Directorate, you may come in contact with interviewees who are victims of human trafficking and individuals who have engaged in the trafficking of human beings. It is crucial that you understand the relevant laws and regulations related to the trafficking of human beings, as well as the procedures for interviewing and adjudicating benefits for both trafficking victims and perpetrators.

Although sometimes incorrectly used interchangeably, the terms “trafficking” and “smuggling” are actually two distinct crimes governed by different bodies of law. While a great deal of international law has been developed regarding trafficking, smuggling

¹ U.S. Dep’t of State, [Trafficking in Persons Report 2015](#), July 2015.

continues to remain primarily under domestic jurisdiction, making it easily adaptable to different criminal justice capacities in countries of origin, transit and destination.

TRAFFICKING VS. SMUGGLING—THE PRIMARY DIFFERENCES²

The distinctions between smuggling and trafficking are often very subtle and at times the two crimes overlap. A situation that begins as migrant smuggling may develop into a situation of human trafficking. There are four primary differences between trafficking and smuggling:

1. Consent – migrant smuggling, while often undertaken in dangerous or degrading conditions, involves consent. Trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers.
2. Exploitation – migrant smuggling ends with the migrant's arrival at his or her destination, whereas trafficking involves the ongoing exploitation of the victim.
3. Transnationality – smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another state or moved within a state's borders.
4. Source of profits – in smuggling cases profits are derived from the transportation or facilitation of the illegal entry or stay of a person into another country, while in trafficking cases profits are derived from exploitation.

This module focuses on trafficking and:

- Provides a general overview of international and U.S. human trafficking legislation and policy.
- Discusses the elements of a human trafficking crime, trends in trafficking, and rights and benefits accorded to identified victims in the United States.
- Describes how you may encounter a potential victim or perpetrator of trafficking during the course of your work and how it may impact the outcome of the final adjudication.

² *Migrant Smuggling FAQs*, United Nations Office on Drugs and Crime, located at <http://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html>

2 INTERNATIONAL AND DOMESTIC LAWS & GUIDELINES REGARDING TRAFFICKING

Concern about human trafficking, both internationally and domestically, has led to the development of a globally coordinated response aimed at combating the practice. One of the first international treaties to address trafficking was the *International Agreement for the Suppression of the White Slave Traffic* signed in 1904. As the first comprehensive international agreement on the subject, the agreement contained several key provisions reflected in current legislation, including:

- identifying trafficking victims at ports of entry and transportation stations
- collecting information from trafficked women
- providing protection and care of indigent victims pending repatriation³

2.1 International Agreements & Conventions

Since the enactment and implementation of the International Agreement for the Suppression of White Slave Traffic in 1904, countries throughout the world have entered into and adopted various treaties and agreements, as well as developed and implemented new policies and legislation related to human trafficking. The most significant agreement to which the United States is a party is the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children—also known as the Palermo Protocol.

United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)

The establishment of the Palermo Protocol in 2000 brought the issue of trafficking to the forefront of governmental discourse and global consciousness. Calling for a comprehensive international approach to the issue of trafficking in countries of origin, transit, and destination, the Palermo Protocol utilized the “three P” strategy to combat trafficking (prevention, protection, prosecution).⁴ The United States subsequently used this approach as the foundation of federal trafficking legislation including the Victims of Trafficking and Violence Protection Act of 2000 (TVPA).

³ International Agreement for the Suppression of the White Slave Traffic (1904), May 18, 1904, reprinted at <http://www1.umn.edu/humanrts/instree/whiteslavetraffic1904.html>.

⁴ United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49 at 60, U.N. Doc A/45/49 (Vol. I)(2001), entered into force Dec. 5, 2003 [Palermo Protocol], preamble, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

To date, there are 133 parties to the Palermo Protocol, of which 117, including the United States, are signatories. Additional policies and legislation related to trafficking are discussed in further detail below.

2.2 United States Laws Related to Human Trafficking

2.2.1 Thirteenth Amendment & Related Criminal Federal Statutes

Domestic trafficking statutes in the United States are rooted in the prohibition of slavery and involuntary servitude as guaranteed by the Thirteenth Amendment, which states in pertinent part that:

Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

[Title 18 of the U.S. Code \(U.S.C.\)](#) houses the specific criminal statutes related to trafficking.

2.2.2 Trafficking Victims Protection Act (TVPA) and Trafficking Victims Protection Re-authorization Act (TVPRA)

On October 28, 2000, Congress enacted [The Trafficking Victims Protection Act \(TVPA\)](#), affording certain rights and protections to victims of severe forms of trafficking, including:

- Protection and assistance to trafficking victims;
- Punishment of traffickers; and
- Prevention of trafficking domestically and internationally.

In [2003](#), [2005](#), [2008](#), and [2013](#) Congress re-authorized the TVPA. Since its re-authorization, the TVPA is now referred to as the Trafficking Victims Protection Re-Authorization Act (TVPRA).

2.2.3 Mandate for federal immigration officials

The TVPA (2000) and its subsequent re-authorizations and accompanying regulations specifically outline a mandate for federal immigration officials as part of the U.S. Government-led anti-trafficking efforts and more clearly define our legal responsibilities. For example, the 2008 TVPRA significantly impacted asylum field policy and procedures when USCIS was accorded initial jurisdiction over asylum applications filed by unaccompanied minors, a particularly vulnerable demographic within the U.S. immigrant population.⁵

⁵ For additional information, please refer to RAIO Training module, *Children's Claims*.

In July 2010, the Department of Homeland Security (DHS) launched the Blue Campaign – a first-of-its-kind campaign to coordinate and enhance the Department’s anti-human trafficking efforts. The Blue Campaign harnesses and leverages the varied authorities and resources of DHS to deter human trafficking by increasing awareness, protecting victims, and contributing to a robust criminal justice response. The campaign is led by an innovative cross-component steering committee, chaired by the Senior Counselor to the Secretary of Homeland Security, and comprised of representatives from seventeen operational and support components from across DHS. The Blue Campaign mandates that all USCIS and other DHS personnel receive training on human trafficking issues.

As an officer within the RAIO Directorate, you are responsible for identifying potential victims of trafficking and reporting your findings so that data on such individuals can be tracked. If you are working domestically, your responsibilities may, where appropriate, include providing victims of trafficking with mandated informational materials about the benefits which may be accorded to them as potential victims, and making referrals to the closest law enforcement official charged with investigating and prosecuting trafficking-related crimes within your jurisdiction.

3 SEVERE FORMS OF TRAFFICKING IN PERSONS

In order for a victim of trafficking to qualify for trafficking-related immigration relief and other benefits, services, and protections in the United States, she or he must meet the definition under the TVPRA of an individual who has been a victim of a “severe form of trafficking in persons.” The term “severe form of trafficking” implies a legal determination that you, as an officer, are not responsible for making. Rather, as an officer you are responsible for familiarizing yourself with the definition of trafficking to the extent that it will assist you in recognizing when an interviewee may be involved in a trafficking-related situation so you can take appropriate next steps to protect that individual and/or ensure the interviewee receives a fair adjudication.

In addition to this definition, the [T visa](#) (trafficking-related immigration relief which is discussed below) has additional eligibility requirements. As an officer within RAIO, you will not need to analyze whether an interviewee meets the criteria for a T visa when you are assessing whether an interviewee is a potential victim of trafficking for RAIO adjudication or protection purposes.

3.1 Definition

Under the TVPRA, the following are listed as severe forms of trafficking in persons:

- **Sex trafficking**, which is defined as the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act,” in which the [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
- **Labor trafficking**, which is defined as 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](#)

A simple way to define human trafficking is all of the activities involved in obtaining or maintaining a person in forced labor or sex service.

Three categories of trafficking victims emerge from this legal definition. They include:

- Minors (under 18) induced into commercial sex
- Individuals age 18 or over involved in commercial sex via force, fraud or coercion
- Children and adults forced to perform labor or other services in conditions of involuntary servitude, peonage, etc. by force, fraud or coercion

This definition applies to any individual who is subjected to trafficking, whether she or he is a foreign national or U.S. citizen.

No Movement Necessary

Despite popular misconception to the contrary, the movement or transportation of an individual is not a required element of the crime of “trafficking.”

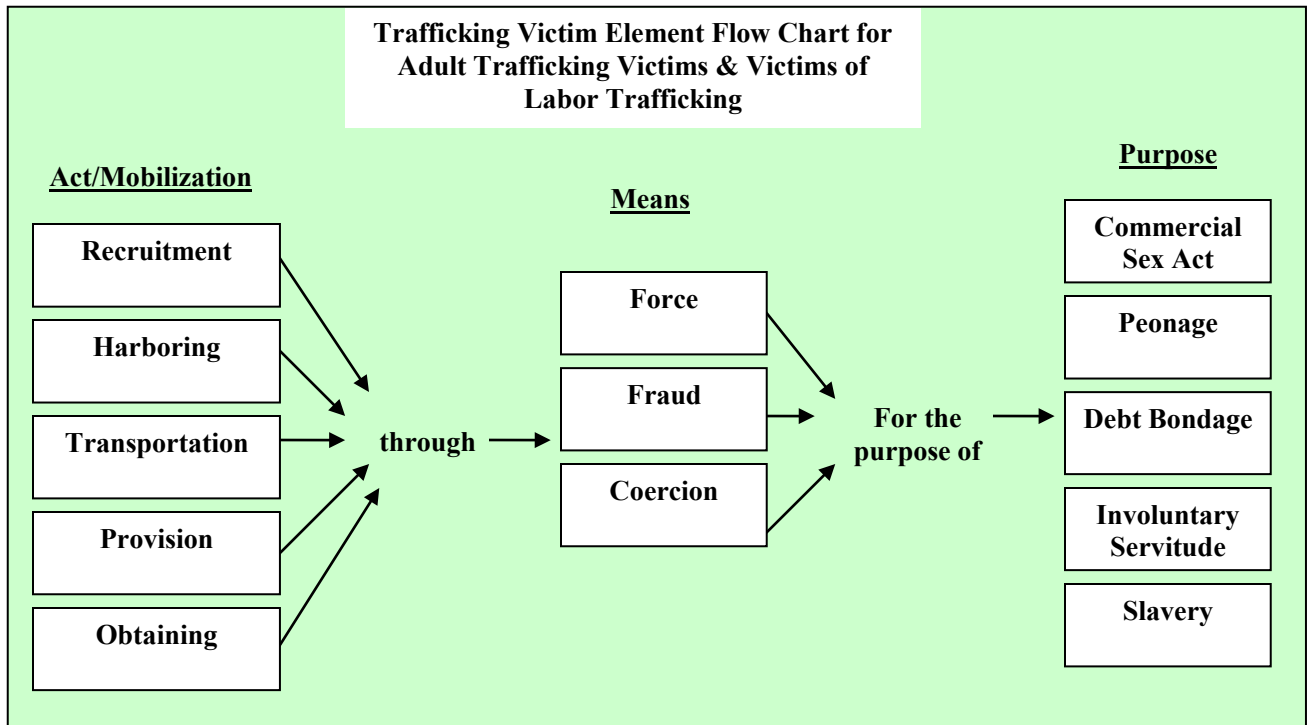
Trafficking is a process comprised of many actions that may occur over a long period of time. During the course of your work with USCIS, you may encounter foreign national interviewees who were trafficked via a range of diverse methods, and who come before you at different points in the spectrum of exploitation. These individuals may have been trafficked in the past, be in a situation of ongoing trafficking/exploitation in the United States or in the third-country where she or he is:

- being interviewed for resettlement
- at-risk for trafficking in the United States or a third country, and/or
- at-risk for being trafficked upon return to his or her home country

3.2 Components⁶

In order to better understand what constitutes a trafficking crime and how to recognize whether an interviewee is involved in a trafficking-related situation, it is helpful to look at the component parts of the definition individually. The chart below provides a visual framework for you to understand the process of human trafficking. The three components include:

- Act/Mobilization
- Means
- Purpose



3.2.1 Act/Mobilization

What act initiated the trafficking process? Was the person recruited, transported, transferred, harbored, or received? Certain acts by the victim or the perpetrator in the initial stages of the human trafficking process may not be self-evident as trafficking acts. Further, the trafficking victim may initially appear to be complicit in the arrangement. An example of this would be if someone responded to an employment advertisement posted by a local employment agency advertising positions abroad (“recruitment”) or voluntarily contracted a smuggler to arrange travel to the United States (“transport”).

⁶ The framework used in the following sections is derived from International Organization for Migration (IOM) [Counter-Trafficking Training Modules](#).

It is important to remember that an individual is not excluded from consideration as a victim of trafficking if she or he was initially complicit in their own mobilization into trafficking.

3.2.2 Means

What techniques such as force, fraud, or coercion (including non-physical inducements) were employed by the third party in order to induce the individual into trafficking?

Some examples of means of force, fraud, or coercion that traffickers may use to control the victim include but are not limited to: debt bondage from a smuggling agreement; confiscation of passports or other identity documents; use of or threat of violence toward the individual and/or his or her family; the threat of shaming the individual; threats of imprisonment or deportation; control of a victim's money; psychological manipulation; and/or isolation from the public and/or the individual's family.

Collusion, a commonly used method of control, is used where the victim may initially have been complicit in an illegal act but then was subjected to trafficking against his or her will, through force, fraud, or coercion. In these situations, the victim may feel responsible for his or her own situation and believe that she or he will be punished for illegal acts in which she or he participated, resulting in a feeling of hopelessness and a reluctance to break free from the trafficking situation.

Under U.S. law, minors cannot consent to providing commercial sex services. Accordingly, in cases where a victim of sex trafficking was under 18 years of age at the time of the crime, the means through which she or he became a victim need not be analyzed. As long as a third party induced the minor's involvement in the exploitation, a determination of the particular means utilized by a third party to traffic the minor is not required.

3.2.3 Purpose

What was the end result? Was the individual exploited or was there intent to exploit? If the individual was exploited, was it through sexual exploitation, forced labor, debt bondage, slavery, or another form of qualifying activity?

As the examples that follow demonstrate, a person may be a trafficking victim “regardless of whether they were born into a state of servitude, were exploited in their hometown, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being subjected to trafficking.”⁷

⁷ U.S. Dep’t of State, [Trafficking in Persons Report 2015](#), July 2015.

3.3 Common Forms of Human Trafficking⁸

In order to fully understand the conditions facing a victim of trafficking, you must bear in mind the full range of potential activities that could constitute trafficking. In the U.S. asylum context, interviewees have disclosed a range of trafficking-related experiences, including forced prostitution, domestic servitude, and child sexual exploitation.

Trafficking: Not Just a Sex Crime

Although trafficking is most often associated with the sex trade, RAIO officers should keep in mind that trafficking includes various forms of labor and/or services.

3.3.1 Sex Trafficking

Activities that may constitute sex trafficking:

- pornography: If the individual is induced by force, fraud or coercion to perform the commercial sex act for the purpose of producing the pornography
- sex tourism: An individual who engages in illicit sexual conduct in foreign places⁹
- prostitution: If the individual is induced by force, fraud or coercion to perform commercial sex acts
- military prostitution: Under U.S. law, it is illegal for anyone to engage in, aid or abet, or procure or solicit prostitution in the vicinity of a military or naval camp. In some instances, individuals may be brought to military camps to engage in sex acts against their will¹⁰

Participation in these activities does not necessarily mean an individual is a victim of trafficking. When the victim is over 18, a third party must be employing fraud, force or coercive techniques to compel a person into sexual services in order for the person to be a victim of trafficking.

3.3.2 Labor Trafficking

Activities that may constitute labor trafficking:

- forced labor

⁸ Derived from U.S. Dep't of State, [Trafficking in Persons Report 2015](#), July 2015.

⁹ [18 U.S.C. § 2423](#).

¹⁰ [18 U.S.C. § 1384](#).

- peonage/bonded labor/debt bondage
- involuntary domestic servitude

Labor trafficking may involve sexual violence being inflicted on the victim but the end result in these forms of exploitation is the labor service.

Sheldon — From Seasonal Worker to Bonded Laborer¹¹

A recruiter in Jamaica promised Sheldon a visa through the U.S. federal H-2B seasonal worker program. The processing fee was hefty, but the prospect of working in America seemed worth it. Sheldon arrived in Kansas City eager to work, but ended up at the mercy of human traffickers. Along with other workers from Jamaica, the Dominican Republic, and the Philippines, Sheldon cleaned rooms at some of the best-known hotels in Kansas City. The traffickers kept Sheldon in debt, constantly charging him fees for uniforms, transportation, and rent in overcrowded apartments. Often, his paychecks would show negative earnings. When Sheldon refused to work, the traffickers threatened to cancel his immigration status, making him illegal. In May 2009, a federal grand jury indicted the leaders of this trafficking ring, including eight nationals of Uzbekistan, on charges related to forced labor in 14 states.

Forced labor or involuntary servitude

Involuntary servitude is defined as:

[a] condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.¹²

In other words, forced labor or involuntary servitude is labor provided against an individual's will. She or he may be obligated to work long hours, under inhumane conditions with little or no pay. The entity exacting the forced labor may use methods such as physical force or the threat of physical force, death threats against the victim or the victim's family, threats to denounce the victim to the police or immigration or another entity that may have authority over the victim (e.g., village elders or parents who have sold the victim), debt repayment obligation (the victim's, the victim's family or ancestors), or other financial obligation scheme.¹³

¹¹ Derived from the [U.S. Dep't of State, *Trafficking in Persons Report 2010*, June 2010](#).

¹² [8 C.F.R. § 21.11 \(a\)](#).

¹³ International Labor Organization, "The Cost of Coercion," *supra*.

Because immigrants may be undocumented and may be unfamiliar with the language, culture, authorities, rights and protections afforded to them in a new country, they are particularly vulnerable to these forms of coercion.

Peonage (Bonded labor, Debt bondage)

“A status or condition of involuntary servitude based on real or alleged indebtedness.”¹⁴

Peonage is when a bond or debt is used to force or coerce an individual to remain in involuntary servitude. Workers around the world fall victim to debt bondage when traffickers or recruiters unlawfully exploit an initial debt the worker assumed as part of the terms of employment.

In the refugee and asylum context, interviewees often assume the initial cost of employment or cost of passage/entry into the third country. Then, upon arrival, once the individuals are isolated and/or restricted in their ability to control their own circumstances, the traffickers may exacerbate the existing debt by charging exorbitant prices for food, clothing, or other basic life or work-related necessities.

You may also see debt bondage amongst legal, documented immigrants. As many foreign nationals enter the country as temporary guest workers (migrant agricultural workers, domestic servants, teachers, nurses, etc.), they are required to remain with their employers as a condition of their legal status. This has the potential to engender a situation where peonage may be easily created or maintained.

Interviewees may also have a fear of harm based on a debt they absconded from in their home countries. For example, in South Asia, in particular, it is estimated that there are millions of victims working to pay off their ancestors' debts.¹⁵

Involuntary Domestic Servitude

Amita — From Domestic Service to Slavery¹⁶

Amita came to London from the Middle East as a domestic servant for a family that treated her well and paid her decently. When her employer moved into a high-level job that provided house staff, the family no longer needed Amita. They helped her find work with another family. Amita's new employers took her passport as soon as she arrived and made her sleep on the floor in the living room to prevent her from stealing things and hiding them in her room. They did not pay her or allow her out of the house, and they threatened to report her to the police as an illegal if she tried

¹⁴ [8 CFR § 214.11 \(a\)](#)

¹⁵ U.S. Dep't of State, [Trafficking in Persons Report 2015](#), July 2015

¹⁶ Derived from the [U.S. Dep't of State, Trafficking in Persons Report 2010, June 2010](#).

to run away. Amita worked in the family's house from 6a.m. to 8p.m. After that, she was taken to clean various office buildings until midnight or early morning. One night, the employer's son and his friends were in the house and attempted to rape Amita. After that she decided to run away and managed to escape with the help of a security guard.

Domestic workers are vulnerable to exploitative conditions because of the nature of their informal work environment. The victim may work as a household servant or as a caretaker of children and live in the employer's house or in adjoining living quarters.

Victims of such exploitation may voluntarily enter into employer/employee arrangements but their situations may evolve over time, or upon arrival in their new country. They may be forced to remain in situations where they become victims of trafficking through force, coercion and sexual exploitation.

Domestic servants may be subjected to verbal abuse, untreated illnesses, deprivation of food, long hours, and, especially in the case of women and girls, sexual abuse and exploitation.¹⁷ As the exploitation occurs in a private residence and the domestic worker is often secluded from outside observation, this type of trafficking would not easily come to the attention of police or other governmental authorities.

3.3.3 Child Trafficking

The age and gender of the trafficking victim are often closely related to the type of trafficking to which they are subjected. Male children are often trafficked to be exploited in forced labor, and illicit activity such as petty crimes and drug trafficking, whereas girls tend to be subjected to sexual exploitation and as forced domestic servants.¹⁸

A child may become involved in trafficking through any of the following means: the child may have been kidnapped; taken from the street (where the child is homeless); legally or illegally adopted; bought from the parents or caretakers; or been given to the traffickers by the parents or caretakers in order to obtain employment.¹⁹ The victims of such trafficking include the child trafficked, the parents or caretakers (where the child was taken or where false pretenses were used), and even the community from which the child was taken if the traffickers were perceived as legitimate job brokers.²⁰

¹⁷ U.S. Dep't of State, [Trafficking in Persons Report 2015](#), July 2015.

¹⁸ *Id.*

¹⁹ It is important to note that a fraudulent intercountry adoption would only constitute trafficking if it resulted in the child becoming a victim of sex trafficking or labor trafficking.

²⁰ U.S. Dep't of State, [Trafficking in Persons Report 2015](#), July 2015.

Vipul — A Childhood Lost²¹

Vipul was born into extreme poverty in a village in Bihar, the poorest state in India. His mother was desperate to keep him and his five brothers from starving, so she accepted \$15 as an advance from a local trafficker, who promised more money once 9-year-old Vipul started working many miles away in a carpet factory. The loom owner treated Vipul like any other low-value industrial tool. He forced Vipul and other slaves to work for 19 hours a day, never allowed them to leave the loom, and beat them savagely when they made a mistake in the intricate designs of the rugs, which were sold in Western markets. The work itself tore into Vipul's small hands, and when he cried in pain, the owner stuck Vipul's finger in boiling oil to cauterize the wound and then told him to keep working. After five years, local police, with the help of NGO activists, freed Vipul and nine other emaciated boys.

Types of exploitation²² to which children in particular might be subjected include the following:

- Labor Exploitation – examples include farming, fishing, domestic servitude, mining, market or street vending, begging, camel jockeying, textile industry, restaurant/hotel work, and shop keeping.
- Sexual Exploitation/Child Sex Trafficking
 - Induced into performance of commercial sex acts.
- Military Conscription/Child Soldiers
 - Victims are often forcibly abducted or “recruited” by government forces, paramilitary organizations, or rebel groups.
 - Victims may be used as combatants, human shields, porters, cooks, guards, servants, messengers, or spies. Young girls may be subjected to forced marriage or forced to have sex with male combatants.
 - Child soldiers of either gender are often sexually abused and are at high risk of contracting sexually transmitted diseases.
- Forced marriage

²¹ Example derived from the Derived from the [U.S. Dep’t of State, *Trafficking in Persons Report 2010, June 2010*](#).

²² U.S. Dep’t of State, [U.S. Dep’t of State, *Trafficking in Persons Report 2015*](#), July 2015.

- Forced or coerced marriages are used by parents and families for a variety of reasons, such as:
 - to settle debt, receive compensation/dowry, create social ties among families, obtain residency permits, display status, provide inheritance, or to counteract promiscuity.
- The existence of a forced marriage does not necessarily present a case of human trafficking. When you encounter a case where a minor is married or when an individual testifies that she or he was married against their will, you should inquire into the terms of the marriage, if there was a bride price and whether conditions of exploitation coupled with one of the three means (force, fraud, or coercion) has been or is being employed. The common forms of exploitation seen in forced marriages may include slavery-like conditions in the form of domestic or sexual servitude.
- Delinquent behavior – carrying out criminal activities for others
 - This may arise in the context of homeless or street children and/or children who live in territories controlled by gangs who are compelled to provide services to local gangs, criminal entities or other third parties in order to survive.

3.3.4 “Re-Trafficking”

The term re-trafficking was coined to describe a situation in which a trafficked individual falls victim to further trafficking upon return to his or her home country. Individuals may be re-trafficked by the same trafficker that initially exploited them or another individual. In the refugee and asylum context, the issue of “re-trafficking” may arise in an interviewee’s discussion of their persecutor and fear of future harm if she or he returns to the home country.

Traffickers often target individuals from families, communities and/or countries which are suffering from socioeconomic and other forms of instability. The individual may have been homeless, sold by his or her family or kinship network, or come from a particularly disadvantaged or disfavored group. The government in the victims’ countries may also be unable or unwilling to protect these individuals from the traffickers for a range of reasons, including its own antagonism to a specific population, apathy, lack of resources, and/or general lawlessness and corruption of the security and political authorities in their country.

The same conditions that initially rendered individuals and their communities vulnerable to traffickers likely still exist. After the individual has been trafficked, she or he may suffer from physical and psychological trauma (including shame and humiliation) which left unaddressed could render her or him vulnerable to further manipulations and coercive tactics of the traffickers.

At the practical level, once a trafficker has victimized an individual, it is relatively easy for the trafficker to locate the victim again. The trafficker is likely to have knowledge of or access to the victim's personal biographical information, his or her family, and even relationships with the authorities in the individual's home locality and/or country.

3.4 Differentiating Human Trafficking from Other Crimes

3.4.1 Trafficking Victim Liability for Criminal Activities

Through the course of being trafficked, an individual may be induced to participate in activities which in and of themselves, constitute crimes under U.S. law. The TVPRA absolves trafficking victims of criminal liability for crimes resulting from their being trafficked.

Examples of this include the following: An individual trafficked in the United States for the purpose of sexual exploitation would not be held criminally liable for the sex acts she or he performed while she or he was trafficked. An individual who was transported into the United States and then exploited would not be criminally liable for his or her illegal entry and/or use of invalid documents.

An interviewee with a criminal record involving certain crimes could raise a red flag to you that she or he may be a victim of trafficking.

3.4.2 Fraudulent Intercountry Adoption Does Not Constitute Human Trafficking

“Over the past few years, the term ‘trafficking’ has often been used as informal shorthand to refer to any type of inappropriate movement of people across international borders.”²³ This is incorrect and often leads to certain fraudulent intercountry adoptions being mislabeled as child trafficking. In many African countries, including Ethiopia, Sierra Leone, Liberia, Madagascar, and Lesotho, fraudulent intercountry adoptions are officially referred to as trafficking.

However, under U.S. law there is a clear distinction between trafficking in persons and illicit intercountry adoption practices, including child-buying and fraud. Human trafficking is the exploitation of a person for the purposes of forced labor or commercial sex. (Please see [Section 3](#) above for the complete definition of human trafficking.) Children undergoing intercountry adoption may be victims of bad actors engaged in criminal practices or other questionable procedures, but a fraudulent intercountry adoption would only constitute trafficking if the adoption was completed for the purposes of forced labor or commercial sex.

²³ [Fraudulent Intercountry Adoption Does Not Constitute Trafficking in Persons](#), Department of State cable 11 STATE 64500 (Jun. 27, 2011)

One type of illicit intercountry adoption practice that is most often confused with trafficking is “child-buying.”²⁴ Since trafficking and child-buying can both involve the giving/receiving of unlawful payments/benefits, many assume that child-buying for adoption is a form of human trafficking. However, that is not always the case. Whereas child-buying is an unacceptable, illegal practice that can occur in the context of an intercountry adoption, it does not necessarily constitute human trafficking under U.S. law. Cases where child-buying occurs during an intercountry adoption, but is not for the purposes of commercial sex or forced labor, would not meet the criteria for trafficking as defined by TVPRA, and under U.S. law would solely be classified as illicit adoption practices.

Trafficking v. Child-buying

If prospective adoptive parents adopt and emigrate a child to the United States using the correct immigration process, there would be no element of child trafficking unless the adoption was for the purpose of forced sex or labor. This is true even if there were concerns of fraud and/or child-buying in connection with the adoption.

For example, if a businessman from Costa Rica paid money to obtain custody of a local villager’s daughter, then formally adopted her and moved the child to El Salvador to work in a factory, this may constitute trafficking. Alternatively, if a person connected to an orphanage paid a birth mother in Vietnam to release her child and that child was in turn adopted by a U.S. family, this may meet the definition of child-buying but would not in itself constitute trafficking.

3.4.3 Human Trafficking Distinguished from Smuggling

The terms human trafficking and human smuggling are often used interchangeably when they are, in fact, distinct crimes. Under U.S. law, the crime of smuggling is generally defined as: “the importation of people into the United States involving deliberate evasion of immigration laws.” This offense includes bringing undocumented aliens into the United States illegally, as well as the unlawful transportation and harboring of aliens already in the United States. The end result of a smuggling agreement is that the individual arrives in the destination country, and after having paid the smuggler the previously-agreed upon fee, the relationship between the two parties ends. Individuals who have been smuggled may have experienced or witnessed violence, including murder,

²⁴ See [8 C.F.R. § 204.3\(i\)](#) for non-Hague cases and [§§ 204.304](#) and [204.309\(b\)\(3\)](#) for Hague cases.

kidnapping, rape and other crimes, but the presence of these aggravating factors alone does not constitute human trafficking.²⁵

U.S. v. Jimenez-Calderon et al.—Smuggled Into Trafficking

Between October 2000 and February 2002, Antonia Jimenez-Calderon, Librada Jimenez-Calderon, and their brothers conspired to recruit underage girls from Mexico to perform acts of prostitution in the United States. The brothers would target young girls from poverty-stricken areas in Mexico, and lure them away from their families and communities with false promises of love, marriage, and a better life. Once smuggled into the United States the girls were held captive and forced into prostitution in a brothel in New Jersey.²⁶

Human trafficking involves an act of compelling or coercing an individual to perform labor services or commercial sex acts. These two crimes are often mistaken for one another. As discussed above (3.2.1 Acts/Mobilization), under the TVPA definition of trafficking, one of many methods a trafficker may use to mobilize an individual to be trafficked is to transport him or her. A trafficker may “smuggle” an individual into another country against his or her will in order to exploit him or her upon arrival, or the trafficker may misrepresent him or herself as a smuggler and then change the terms of the agreement once the individual arrives in the destination country. However, the act of smuggling an individual and/or being smuggled has no direct relationship to the crime of trafficking itself.

Complicity is not Always a Crime

An individual’s willingness to be smuggled into another country does not minimize the victimization he or she may experience at the hands of a trafficker.

The chart below highlights the factors that distinguish the crime of smuggling from human trafficking:²⁷

²⁵ [INA § 274](#); ICE Office of Investigations Memo “[Definitions of ‘Human Smuggling’ and ‘Human Trafficking,’](#)” dated December 13, 2004.

²⁶ *U.S. v. Jimenez-Calderon*, Criminal Section Selected Case Summaries, U.S. Department of Justice, located at https://www.justice.gov/archive/opa/pr/2004/May/04_crt_303.htm.

²⁷ [INA § 274](#); ICE Office of Investigations Memo “[Definitions of ‘Human Smuggling’ and ‘Human Trafficking,’](#)” dated December 13, 2004.

	Smuggling	Trafficking
Purpose	Obtain illegal entry into the United States	Recruiting, transporting, harboring or receiving persons by force or coercion for the purpose of exploitation
Consent	Consented to be smuggled	May or may not have consented, or initial consent rendered meaningless by coercive or abusive actions of the traffickers
Result	Ends with arrival into the United States	Involves ongoing exploitation

3.5 Rights and Immigration Relief for Victims of Human Trafficking

With each re-authorization of the TVPRA, the U.S. Government response to trafficking has become more comprehensive, as has its ability to extend protection to victims and to more aggressively investigate and prosecute these crimes.

Victims of trafficking who are present in the United States, especially undocumented foreign nationals, will likely not be aware that the crimes being committed against them are punishable under U.S. law, and that they have rights and could be eligible for benefits in the United States because of the crimes committed against them. Human traffickers also often use the threat of reporting the victim to immigration authorities as a way of keeping the victim under their control.

In order to provide protection to those who are undocumented and to enable these individuals to participate in law enforcement investigations, immigration law provides specific forms of relief from removal for such victims of severe forms of trafficking and benefits from the U.S. Department of Health and Human Services, similar to the benefits granted to refugees. Trafficking victims may also qualify for other forms of relief available to all qualifying aliens under immigration law, such as asylum or withholding of removal.

During the course of your work, you may encounter interviewees who have received or have pending applications for trafficking-related immigration benefits. It is important for you to understand the significance of these documents only so far as it furthers your understanding of the interviewee's claim during their adjudication.

The forms of immigration relief available to victims of severe forms of human trafficking include:

- Continued Presence
- T Visa
- U Visa
- Asylum/Withholding of Removal

3.5.1 Continued Presence (CP)

CP is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. In order to qualify, the individual must be an identified victim of trafficking who is a potential witness in the investigation or prosecution of the trafficker.

This status allows such victims to remain in the United States temporarily during the ongoing investigation into the human trafficking-related crimes of which they were victims. CP is initially granted for one year and may be renewed in one-year increments. It provides victims a legal means to temporarily live and work in the United States for the duration of the investigation of the trafficking case and/or the adjudication of another form of immigration relief.²⁸

Only federal law enforcement officials are authorized to apply for CP on a victim's behalf and applications are submitted to ICE HQ for consideration. If granted, the victim becomes eligible for a work permit and U.S. Department of Health and Human Services benefits.²⁹

3.5.2 T Visa

The T visa provides a victim of trafficking with four years of legal status in the United States, which can be extended, and the possibility of [becoming a Lawful Permanent Resident](#) (LPR). T visa recipients receive work authorization, and may also request advance parole and may seek derivative status for their relatives (spouse, children, and, if the recipient is under age 21, parents and unmarried siblings under age 18).³⁰ A trafficked person may meet the requirements for T visa eligibility if he or she:

- is or was a victim of trafficking, as defined by law
- is in the United States or its territories, or at a port of entry due to trafficking

²⁸ [22 U.S.C. § 7105\(c\)\(3\)](#)

²⁹ ICE Information Pamphlet, "Continued Presence: Temporary Immigration Status for Victims of Trafficking," <http://www.dhs.gov/xlibrary/assets/ht-uscis-continued-presence.pdf>.

³⁰ [INA § 1101\(a\)\(15\)\(T\)\(ii\)](#)

- complies with any reasonable request from law enforcement for assistance in the investigation or prosecution of the human trafficker
- demonstrates that he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States
- is admissible to the United States or, if inadmissible, qualifies for a waiver

An application for a T Visa is completed on a [Form I-914, Application for T Nonimmigrant Status](#). Click on the link below for more detailed information about eligibility requirements for T visas.

- [T Visa Eligibility Requirements](#)

The requirements for a T visa, specifically the need to be physically in the United States on account of said trafficking, should not be confused with the definition of a trafficking victim. If you come across a file which contains a T visa application, you should only use the information it contains to elicit more nuanced testimony that substantiates or discredits the interviewee's claim to the extent it is relevant to your adjudication. DHS employees are prohibited by statute from disclosing information related to T visa applicants to anyone outside the Department.³¹

3.5.3 U Visa

The U visa provides immigration status to victims of twenty-eight specified serious crimes including trafficking, domestic violence, involuntary servitude, and kidnapping.³² The U visa affords similar benefits as the T visa, including four years legal status, with the possibility of extension, LPR status after three years if the alien qualifies, work authorization, and advance parole. The individual may also seek derivative status for his or her relatives (spouse, children, and, if the recipient is under age 21, parents and unmarried siblings under age 18). Eligibility for a U visa requires that an individual:

- is or was the victim of qualifying criminal activity
- is or has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity
- has information about the criminal activity
- is, was, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime
- was involved in a crime that occurred in the United States or violated U.S. laws

³¹ [8 U.S.C. § 1367\(a\)\(2\)](#).

³² [INA § 1101\(a\)\(15\)\(U\)\(iii\)](#)

- is admissible, or if inadmissible, able to qualify for a waiver

An application for a U-Visa is completed on a [Form I-918, Petition for U Nonimmigrant Status](#). Click on the link for below for more detailed information about U-visas.

- [U Visa Eligibility Requirements](#)

As with the T visa, if you come across a file which contains a U visa application, you should only use the information it contains to elicit more nuanced testimony to the extent that it substantiates or discredits the interviewee's claim and is relevant to your adjudication. Also as with T visa applicants, DHS employees are prohibited by statute from disclosing information related to U visa applicants to anyone outside the Department.³³

The fact that an individual's legal advocate made the strategic and discretionary decision to apply for a U visa on an individual's behalf in lieu of a T visa is in no way determinative as to whether an individual is a victim of trafficking.

Two Visas for Trafficking?

The "T" nonimmigrant status, also known as the "T" visa, was created to provide immigration protection to victims of a severe form of human trafficking. The "U" nonimmigrant status, or "U" visa, is designated for victims of certain crimes who have suffered mental or physical abuse because of the crime and who are willing to assist law enforcement and government officials in the investigation of the criminal activity.

Congress created the "T" and "U" nonimmigrant classifications with passage of the TVPA in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while, at the same time, offering protection to victims of such crimes.³⁴

3.5.4 Refugee/Asylum/Withholding of Removal/Credible Fear

A victim of trafficking or an individual who fears being trafficked in his or her country of origin may be eligible for refugee or asylum status or withholding of removal as would any other individual who meets the definition of a refugee. The United Nations Office of

³³ [8 U.S.C. § 1367\(a\)\(2\)](#).

³⁴ [Fact Sheet: USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity](#).

the High Commissioner for Refugees recognizes that not all victims or potential victims of trafficking fall within the scope of the refugee definition. However, on occasions where trafficking victims do fall within the refugee definition, the international protection community has a responsibility to recognize it as such and afford the corresponding international protection.³⁵ Click on the link below for specific information about asylum and refugee eligibility for trafficking victims.

- [Eligibility requirements for asylum or refugee status](#)

4 ENCOUNTERING VICTIMS OF HUMAN TRAFFICKING

The officers and agents of the three DHS front-line agencies, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), are most likely to encounter potential victims of trafficking during the course of their daily work. An ICE agent may encounter a trafficking victim during an investigation or operation, whereas a CBP officer may intercept someone who is being smuggled or who is attempting entry into the United States through a port of entry. Officers within the RAIO Directorate may encounter a potential victim of trafficking in the context of the adjudication of a request for an immigration benefit.

Indicators that an interviewee may be a victim of trafficking may surface prior to, during, and/or after the interview adjudication.

4.1 “What Does a Human Trafficking Victim Look Like?”

Trafficking victims can include individuals from any country, of any age, gender, nationality, educational background and immigration status. Trafficking may take place in “underground” operations, like illegal brothels, sweatshops, factories, mines, agriculture fields, fishing vessels or private homes. However, trafficking is often carried out in public establishments such as bars, restaurants, nightclubs, casinos, hotels and massage parlors, or in street vending and/or begging.

While a trafficking victim’s experience may be quite unique, there are certain risk factors, patterns and trends in trafficking among different demographics in the population that you interview (within ethnicities, countries of origin, age, and gender) of which you should be aware. This knowledge will assist you in detecting and discerning indicators of trafficking from other concerns for a particular interviewee.

³⁵ [Guidelines on International Protection: The Application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked](#), UN High Commissioner for Refugees (UNHCR), 7 Apr 2006, 17 p.

Addressing the Myths about Trafficking Victims

- Trafficking is not equivalent to smuggling. It does not require forced movement or border crossing.
- Trafficking does not require physical force, kidnapping, restraint or abuse.
- The consent of the victim is considered irrelevant, as is payment.
- Not all trafficked people have been trafficked for the purposes of sexual exploitation.
- Those who migrate legally can be victims of trafficking.
- Women and children are not the only victims of trafficking.
- Trafficking is not only a problem in Eastern Europe and Southeast Asia.
- Trafficking is not only a problem amongst the uneducated and poor.

4.2 Detecting Indicators of Human Trafficking

As discussed above, as an officer in the RAIO directorate you are responsible for detecting indicators that the interviewee before you may have been trafficked or may be at ongoing risk of trafficking, and following appropriate procedures within your division depending on the circumstance.

4.2.1 Pre-Adjudication File Review

Prior to the adjudication of a benefit, you may have the opportunity to review the case file.

Documents or database notations that may indicate that the interviewee may be a victim of trafficking include:

- Notations within database records from other agencies regarding investigations, encounters, or contact with informers that indicate that the person has been or is being trafficked. Please keep in mind that such notations may be entered post-USCIS interview but prior to final adjudication.
- Documents from other federal agencies such as DOS, ICE, CBP, etc. that indicate a past encounter with the interviewee indicative of a possible trafficking or smuggling situation.

- Documents from other federal agencies that indicate a past or ongoing investigation or operation regarding trafficking or smuggling.
- Documents or applications for continuing presence or T or U visas present in file.
- Criminal court documents/Database hits that show that the interviewee was arrested for a type of crime in which a trafficking victim might be subjected to exploitation.
- Letters from informants or “snitches.”
- Unusual travel patterns indicated in application documents. Such patterns may indicate possible trafficking or smuggling routes.
- Travel from foreign countries that are known for being a source area for trafficking victims.³⁶
- Employment in the United States or abroad that may indicate that interviewee has been or is being exploited.
- School-age children who have not listed attendance in school (minor principal interviewees),
- Background information on the application indicates that the interviewee is from a group in society that would be particularly vulnerable to trafficking and the interviewee’s presence in the United States or the country from which he is requesting the benefit does not appear to be logical given that background. An example of this may be an unaccompanied minor with uncertain ties in the United States.

If there are indicators that the interviewee before you has been trafficked, you must still maintain your focus on trying to elicit sufficient testimony related to his or her eligibility for the particular benefit you are adjudicating. You may also provide the interviewee with [informational pamphlets](#) to fulfill the TVPRA mandate, as appropriate, taking care to note the circumstances of the interviewee as she or he may be endangered if such pamphlets are provided in the presence of the trafficker. If there are indicators that the interviewee is currently in a trafficking situation, you should advise your supervisor as soon as possible. This may be prior to adjudicating the benefit or even during pre-interview file preparation or during the interview, if appropriate.

Depending on the nature of the evidence and the nature of the situation, your supervisor or Office Trafficking Coordinator may need to contact local ICE or other agents, who may have additional information or desire to be present in the

³⁶ Such as countries designated as “Tier 2,” “Tier 2 watch list” or “Tier 3” in the DOS TIP reports. See: <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>

event that you interview the individual. Remember that the necessity to contact law enforcement can arise at any stage of the adjudication process.

4.2.2 Screening for Potential Victims of Trafficking: Suggested Lines of Inquiry

Individuals who have been or are in the process of being trafficked or exploited experience a significant loss of control over their lives and activities. During their testimony, such interviewees may testify regarding an area of their life being controlled by another person. Additionally, human trafficking victims may have visible signs of abuse or exhibit behaviors that are associated with people who have been victimized. Such “red flags” may alert you to the fact that the interviewee is or has been a victim of human trafficking.

The information in the links below was designed to assist you in eliciting further information from interviewees in interviews where a red flag has been raised, so that you can determine with more certainty whether the interviewee is a victim of human trafficking. These lines of inquiry will improve your ability to articulate your concerns about the interviewee’s current situation to your office management and in office referrals to law enforcement. You should keep in mind that the lists are not all-inclusive and only serve as a framework for questioning. Every interview will be different as your questions will be tailored to the interviewee based on his or her answers to the questions.

You are not expected to indiscriminately run through lists of questions. You are expected to select a few choice questions that directly relate to the red flag that has been raised in the interview and which would not appear unusual in the course of the interview. You are expected to proceed with questioning in an extremely sensitive manner, taking into account that any individuals accompanying the interviewee may be affiliated with the trafficker.

Suggested Lines of Inquiry by Subject Matter

- [Understanding Asylum Benefits and Process](#)
- [Physical health/behavior](#)
- [Recruitment/Migration](#)
- [Identification](#)
- [Working Conditions](#)
- [Debt Questions](#)
- [Living Environment/Transportation](#)
- [Social Ties/Conditions](#)
- [Force, Fraud, Coercion](#)
- [Minor: Under 18](#)

- [Safety Assessment](#) (if interviewee alone and expresses fear)

4.2.3 Other Indicators of Trafficking

If during the interview you discover indicators that the interviewee is currently in a trafficking situation, you should advise your supervisor prior to concluding the interview. In all cases, follow the procedure for such cases in your particular office.

4.2.4 Interviewing Where the Victim is Accompanied by a Third Party

If your interviewee is accompanied by a third party who appears potentially suspicious, such as an interpreter, representative, or (in the case of a minor child) a parent or trusted adult, you do not want to alert them to your suspicions as he/she may be working with the trafficker. Whenever possible, the interviewee should be questioned in regard to the trafficking concerns apart from such persons, preferably using a trusted person who speaks the interviewee's language. Because of the complicated nature of interviewing individuals in these circumstances, you should consult the relevant procedures and your supervisor for specific instructions.

4.3 Other Adjudication Considerations

In a case where the trafficking-related experience that an interviewee testifies to relates to the basis of a protection claim, the interviewee is forthcoming about his or her claim, and does not appear to be at ongoing risk, officers apply the facts of the case, including the trafficking-related elements, to the protection-related legal analysis. Identifying and understanding the type of trafficking the victim suffered can inform the questions you ask to elicit more complete testimony.

If an interviewee is not forthcoming about a trafficking experience and you suspect she or he is currently being trafficked, his or her testimony may arouse suspicions as to his or her credibility when, in fact, there may be reasons other than abject fraud for this behavior. For further guidance and considerations, see RAIO Training modules, *Children's Claims, Evidence, and Interviewing Survivors of Torture and Other Severe Trauma*.

4.4 Issues Affecting Benefit Eligibility for Trafficking Victims and Traffickers

The Immigration and Nationality Act (INA) has various legal provisions that are applicable to interviewees who have committed or been convicted of a crime related to human trafficking. Additionally, sometimes the victim of the trafficking crime may have been forced or coerced into committing acts such as theft, drug trafficking, or prostitution that constitute crimes that might be impediments to obtaining immigration status.

Positive results from a background check and/or police or criminal court documents found in the file regarding criminal offenses such as the ones described above, in addition

to being evidence of a possible impediment to an immigration benefit, may be an indication that the person is or has been a victim of human trafficking.

4.4.1 Trafficking Victim

A victim of trafficking may have been forced to engage in or have been convicted of a criminal act, such as larceny, drug carrier, prostitution, or other illegal vice, and this activity may render him or her subject to criminal or security inadmissibility grounds under INA § 212 (a)(2) and (a)(3)(b). These interviewees may be eligible for exemptions or waivers. If you interview such an individual, be sure to elicit full testimony as to the nature and type of coercion involved in securing the interviewee's participation or support of the criminal activities as this information may not only assist law enforcement, but also may establish the victim's eligibility for an exemption or waiver if necessary.

4.4.2 Trafficker

If your interviewee has demonstrated participation in criminal behavior that indicates she or he has colluded in trafficking crimes, you must review this activity to determine if it is a bar to eligibility for the benefit you are adjudicating, or if a ground of inadmissibility applies.

In addition to being subject to a mandatory bar in the asylum context, an alien who is found to have persecuted others on account of a protected ground may not be considered a refugee under the refugee definition and therefore would not be eligible for refugee status or asylum status within the United States.³⁷

4.4.3 Additional Resources

Department of State, Trafficking in Persons Report (TIP)

- An annual report produced by DOS to evaluate foreign governments' responses to trafficking. The TIP report is the premier U.S. Government resource on trafficking trends and includes country-specific narratives that describe the specific at-risk populations and types of trafficking in each country. For the most current report visit [DOS TIP Report](#).

National Human Trafficking Resource Center (NHTRC)

- A Department of Health and Human Services (HHS) funded hotline providing comprehensive resources for victims, government and NGO practitioners on all trafficking-related issues. Hotline number: 1-800-3737-888.

UNHCR Report "Refugee Protection and Human Trafficking"

³⁷ [INA § 101 \(a\)\(42\)](#).

- A December 2008 report analyzing the interaction of refugee protection and human trafficking. The resource list at the end is a very comprehensive list of legal documents and country-specific reports that have been published on trafficking.
<http://www.unhcr.org/publ/PUBL/4986fd6b2.pdf>.

PRACTICAL EXERCISES

Practical Exercise # 1

- **Title:**
- **Student Materials:**

OTHER MATERIALS

Other Materials – 1

Definition of Terms

Coercion: Threats of serious harm to or physical restraint against any person; 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 the abuse or threatened abuse of the legal process. [\[return\]](#)

Commercial sex act: Any sex act on account of which anything of value is given to or received by any person. [\[return\]](#)

Debt bondage: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined. [\[return\]](#)

Involuntary servitude: A condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process. [\[return\]](#)

Peonage: A status or condition of involuntary servitude based on real or alleged indebtedness. [\[return\]](#)

Slavery: (according to Art. 1, Slavery Convention, 1926 as amended by 1953 Protocol) The status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised. [\[return\]](#)

Smuggling: (according to Article 3(a) of the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air): The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights.

Trafficking in persons (according to Article 3 of the Palermo Protocol): The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery,

servitude or the removal of organs. [\[return\]](#)

Other Materials - 2

T visa Eligibility Requirements

The eligibility requirements for the T visa can be found at INA § 101(a)(15)(T) and at 8 CFR § 214.11. To be eligible for a T visa, the alien:

- Is or has been a victim of a severe form of trafficking in persons;
- Is physically present in the United States, American Samoa, Northern Mariana Islands, or at a port of entry on account of such trafficking;
- Has complied with a reasonable request for assistance in the investigation or prosecution of acts of trafficking or is under 18 years old or is unable to cooperate with a request for assistance due to physical or psychological trauma;
- Would suffer extreme hardship involving unusual and severe harm upon removal;
- Must be admissible, or if inadmissible under any ground of inadmissibility applicable to T visa applicants, must be eligible for a waiver of inadmissibility; and
- Must merit a favorable exercise of discretion.

Exemptions and waivers exist for T visa applicants and can be found at INA § 212(d)(13)(A) & (B). T visa applicants are not subject to the public charge ground under INA § 212(a)(4) and may be granted a waiver of any other inadmissibility ground, except provisions regarding terrorist activity (212(a)(3)) and miscellaneous grounds such as child abduction and renunciation of U.S. citizenship to avoid taxation (212(a)(10)(C) & (E)), if the activities rendering the alien inadmissible were caused by or incident to the victimization and if the Secretary of Homeland Security considers a waiver grant to be in the national interest.

Other Materials – 3

U Visa Eligibility Requirements

The eligibility requirements for the U visa can be found at INA §101 (a)(15)(U) and at 8 CFR § 214.14. To be eligible for a U visa, the alien must establish that:

- The alien has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity, which includes trafficking;
- The alien possesses information concerning that qualifying criminal activity (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien);
- The alien has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement investigating or prosecuting one of the qualifying criminal activities (or in the case of an alien child under the age of 16, the parent, guardian or next friend of the alien);
- The criminal activity described violated the laws of the United States or occurred in the United States;
- The alien must be admissible, or if inadmissible under any ground of inadmissibility applicable to U visa applicants, must be eligible for a waiver of inadmissibility;
- The alien merits a favorable exercise of discretion.

With the exception of INA § 212(a)(3)(E) (participants in Nazi persecution, genocide, and/or torture), all inadmissibility grounds may be waived under INA § 212(d)(14) if the Secretary of Homeland Security considers that it would be in the public or national interest to do so.

Qualifying Criminal Activities

- Abduction
- Abusive Sexual Content
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting

- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes

Other Materials – 4

Eligibility Requirements for Asylum or Refugee Status

Harm

Victims of trafficking are widely known to have experienced harm (physical and emotional coercion, severe forms of labor and sexual exploitation, threats to their life) to a level of severity that would constitute persecution. This harm may be inflicted or condoned by the government of their country, those closely affiliated with branches of their government, or by individuals and/or groups that the government of the country they are fleeing cannot or

does not control.

Protected Characteristics

A central part of the analysis will focus on whether the persecutor selected the individual indiscriminately and then trafficked him or her for purely opportunistic criminal reasons or if the persecutor was motivated to harm the victim on account of one of the five protected grounds possessed by or imputed to the victim. In some countries, traffickers may target members of particular ethnic or political minorities, which would fit under the traditional rubric of the nationality and political opinion protected characteristics.

Victims may be targeted on account of their status as members of a particular social group, which would require evidence from country conditions reports and a proper legal analysis. See RAIO Training module, *Nexus and the Five Protected Grounds*. Traffickers associated with organized crime or insurgent groups may also have authority or influence over a particular area in a given country such that sub-groups within that area may be considered members of a particular social group. A potential particular social group may be based on an interviewee's status as a victim of trafficking (e.g. "formerly-trafficked COUNTRY females/children/ males") if country conditions reports indicate that trafficking victims who return to their country of origin may be targeted and suffer harm.

Immediately below are sample inquiries relevant to particular social groups that might be used to elicit a possible nexus to a protected ground from a trafficking victim:

- Does the interviewee possess a protected characteristic or could a protected characteristic be imputed to the interviewee?
- Was the perpetrator aware of any such actual or imputed characteristic?
- Does the interviewee know any other persons that were victimized by the feared perpetrator? Did any such victims share common characteristics with the interviewee?
- Did the interviewee know the perpetrator before the harm was committed?
- Is the perpetrator or feared perpetrator a person of power or connected with persons of power in the area in which the interviewee lived?
- Was interviewee targeted as punishment for the protected characteristic? E.g., the interviewee belonged to a rival political group, belonged to particular tribe, minority nationality, minority religion, etc.?
- Does or did the interviewee have shared, immutable or fundamental characteristics that are sufficiently visible within her or his society that facilitated or made trafficking of the victim advantageous?
- Do country conditions indicate that the interviewee is similarly situated to groups that

are selected for harm within her or his country or country of last habitual residence?

- Does the interviewee come from a city/region/country where human trafficking is prevalent? Do populations targeted for trafficking in that country share common characteristics?
- Is the interviewee aware of human trafficking victims who have been returned to their country? Have they had any problems?

Country Conditions Evidence

The Department of State Annual Trafficking in Persons Report (and other country conditions reports) outline the demographic groups at risk for trafficking in each country and monitor and evaluate individual government's efforts to prevent trafficking crimes, protect victims of such crimes, and prosecute those responsible for trafficking others. These resources should be consulted to assist you in making a determination and substantiating your position as to whether the interviewee suffered past persecution or has a well-founded fear of persecution on account of one of the protected characteristics, and whether she or he was targeted by the government or by an entity that the government remains unable or unwilling to control.

NOTE: As mentioned above, the following lines of suggested inquiry are meant to serve as a guide and not an exhaustive list of interview questions. RAIO officers should always tailor interview questions to the specific facts of each interview.

<p style="text-align: center;"><u>Other Materials – 5</u></p> <p style="text-align: center;">Understanding Benefits and Application Process</p>	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee does not understand/ know what she or he is applying for • Interviewee has inconsistencies in his or her story • Interviewee is accompanied by someone who is speaking on his or her behalf • Interviewee uses false identification papers 	<ul style="list-style-type: none"> • Do you know why you are here? • What will happen if you receive the benefit? • Who prepared your application? • Was it read back to you? • Were you given any materials to help you during your interview?

	<ul style="list-style-type: none"> • If you are granted the benefit, will you be in debt to anyone? • What is your relationship to the person accompanying you? • How did you meet the person accompanying you/interpreter/preparer/attorney/ representative? • Where did you get these documents?
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<u>Other Materials – 6</u> Physical Health/Behavior³⁸	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee exhibits paranoia, fear, anxiety, depression, tension, nervous behavior • Interviewee displays heightened emotionality that in some way is inconsistent with the benefit request being presented • Submissive, tense, nervous behavior and/or avoids eye contact³⁹ • Reluctance to speak in front of people of shared background • Reluctance to speak with someone of 	<ul style="list-style-type: none"> • Do you have any mental or physical health issues? How long? Cause? • Do you feel uncomfortable speaking about any issues in your claim with a male/female officer? Or with me for any particular reason? • How many meals/day do you eat? • Can you eat anytime you want? Is your food locked up? • Do you have to pay for food? • If you pay your employer for food, could you also buy food from anyone else if you want?

³⁸ Officers should keep in mind that most, if not all, of these indicators are fairly common in victims of torture/trauma/abuse in the asylum/refugee context.

³⁹ Although these might be indicators of trafficking, officers should keep in mind that all of these behaviors may be appropriate/expected depending on the culture of the interviewee and be unrelated to trafficking concerns.

<p>opposite or same gender</p> <ul style="list-style-type: none"> • Signs of poor health/ malnourishment. • Visible physical injuries (scars, cuts, bruises, burns) • Tattoos or other marks 	<ul style="list-style-type: none"> • Were you ever hungry? • Do you have to ask permission to eat? • Do you eat together with the people you are living with? Do you eat the same food as the people you are living with? • How did you receive your injuries? Have you seen a doctor for your injuries? • Where did you receive those tattoos or markings? What do they mean?
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<p style="text-align: center;"><u>Other Materials – 7</u></p> <p style="text-align: center;">Recruitment/Migration</p>	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee was recruited for one purpose and forced to engage in another job • Interviewee was brought to the United States against his or her will • Interviewee did not know his or her destination was the United States • Interviewee did not arrange his or her own travel • Interviewee is not informed about means and method of travel from home country 	<ul style="list-style-type: none"> • Why did you come to the United States? • How did you get here? • Who did you come with? • How did you get your passport? • Who arranged your travel? • Who paid for your ticket to come? • Do you owe money for your trip? • Did you incur a debt before you left your country? • If so, how did you pay it?

	<ul style="list-style-type: none"> • How much did you pay the smuggler? • Who picked you up from the airport? • How did you find out about the job? • What did you expect when you came? • What was it like when you started to work? • What did you end up doing? • Were you scared?
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Other Materials – 8

Identification

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee is not in possession and/or control of his or her documents • Employer is holding interviewee's identity and/or travel documents 	<ul style="list-style-type: none"> • When you traveled to the United States were you able to keep your identification documents with you or did someone take them from you? • Do you have any papers? • Do you have your passport and identity documents? If not, who has them? • Do you have access to them? • Where are they kept?

Other Materials – 9

Working Conditions

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee is not in control of his or her own money • Interviewee expresses lack of freedom to leave working conditions • Interviewee was forced to perform sexual acts as part of employment • Interviewee was forced to work extensive hours without fair compensation 	<ul style="list-style-type: none"> • Are you in school? • Are you working? • What kind of work do you do? • How did you get this job? • Are you paid? How much? • How often? • What are your work hours? • How much do you make per hour? • Do you get overtime pay? • Were you able to discuss how much you were getting paid with your employer? • Do you owe money to your boss or someone else? • What would have happened if you didn't give that person your paycheck? • If you were sick, could you take a day off or stop working? • Can you take days off work? • How much time could you take off? • Has your boss told you that you owe money? • Did anyone ever take your income? • Can you keep your money? • Can you leave your job if you want? Did

	<p>you ever? Why or why not?</p> <ul style="list-style-type: none"> • Were you able to take breaks when you wanted to? • What happens if you make a mistake at work? • Are there guards at work or video cameras that monitor and ensure no one leaves? • What did you fear would happen if you left? • Are you ever forced to do something you don't want to do? • Did anyone ever threaten to hurt you or your family if you did not work? • Are you afraid of your employer? Why? • Did anyone force you to cook or clean the house? • If you worked outside the home, were you lied to about the type of work you would be doing when you accepted the job? • Did your employer tell you what to say to immigration officials or law enforcement? • Did your employer ever threaten to have you arrested?
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Other Materials – 10

Debt Questions

<u>Indicators</u>	<u>Suggested Questions</u>
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<ul style="list-style-type: none"> Interviewee's salary is being garnished to pay off debt (Paying off smuggling fee alone is not trafficking but is a red flag.) 	<ul style="list-style-type: none"> How much money did you have left over after you paid everything you need to pay? Could you spend your money the way you want to? Did the person who pays you ever "save" or "hold" money for you? Do you owe anyone money? If so, who is it and why? How did you incur the debt? How long have you had your debt? Is it increasing? If so how is it increasing and why? Do you feel it's difficult to pay off your debt and why? What do you think will happen to other people in your life if you don't pay? Do you have weekly/monthly expenses to your employer? What are they?
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Other Materials – 11

Living Environment/Transportation

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> Interviewee exhibits lack of knowledge of his or her own whereabouts (jurisdiction) Interviewee has been harmed or deprived of food, water, sleep, medical care or other life necessities 	<ul style="list-style-type: none"> Where do you live? (inability to clarify address = indicator) Who else lives there? Where do you sleep?

<ul style="list-style-type: none"> • Interviewee is living at workplace or with employer • Lack of freedom to leave living conditions • Interviewee is always escorted, is never alone 	<ul style="list-style-type: none"> • Can you leave as you wish? • Are you scared to leave? • Do you live in the place where you work? • Do you go to the grocery store by yourself? • What city did you first live in the United States? • How do you get around from place to place? • How much do you usually pay for transportation? • Do you drive? Where did you learn to drive? • Do you go places by yourself?
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<p style="text-align: center;"><u>Other Materials – 12</u></p> <p style="text-align: center;">Social Ties/Conditions</p>	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee cannot contact friends and family freely • Interviewee is isolated from their community 	<ul style="list-style-type: none"> • Do you have family or friends in the United States? • Do you spend time with them? • Do you have time to spend with your friends/family? • What do you do with them? • Can you bring friends home? • Do you buy food and clothes on your

	<p>own?</p> <ul style="list-style-type: none"> • If you are in trouble, who are you most likely to call?
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<p style="text-align: center;"><u>Other Materials – 13</u></p> <p style="text-align: center;">Force, Fraud, Coercion</p>	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee does not have freedom of movement • Interviewee's friends or family have been threatened with harm if interviewee escapes. • Interviewee has been threatened with deportation or law enforcement action • Unusual distrust of law enforcement • Interviewee was forced to perform acts against his or her will • Interviewee was forced to perform sexual acts against his or her will • Evidence of abuse (physical, mental, sexual) 	<ul style="list-style-type: none"> • Has anyone ever threatened you to keep you from running away? • Has anybody ever hurt you to make you stay? • Has your family been threatened? • Did you ever feel pressured to do something that you didn't want to do or felt uncomfortable doing? How did you feel pressured? • Did your employer ever take photos of you? What (if anything) did he/she say he/she would do with those photos? • How safe do you feel right now? • Were you allowed to leave the location/building where you live, where you work? • Do you feel like your movement is controlled by someone else? • Was there ever a time you wanted to leave somewhere and you felt you couldn't? Why did you feel that way? • What do you think would have happened if

	<p>you left without telling anyone?</p> <ul style="list-style-type: none"> • Were you ever physically hit and/or slapped by your employee/manager or anyone else? • Did you ever see anyone else get hit or slapped by your employer? • Do you feel you were deceived about anything having to do with your current job? • How did you find your job? • What were you told about your job before you started? • Were you ever promised something that did not happen? • Did conditions on your job change over time?
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<p><u>Other Materials – 14</u></p> <p>Minor: Under 18</p>	
<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee is a child and not in school or has significant gaps in schooling • Interviewee does not live with her or his parents • Interviewee provides insufficient information about parental knowledge of benefit application • Interviewee provides insufficient or contradictory information about the 	<ul style="list-style-type: none"> • Are you in school? • How does your parent/guardian/caregiver treat you? • Are there rules/conditions that your caregiver has set? • Are you responsible for obtaining your food or purchasing other items?

<p>relationship to guardians and/or trusted adults accompanying her or him to the interview</p> <ul style="list-style-type: none"> • Interviewee may be hungry or malnourished or have not reached their full height • Interviewee may have poorly formed or rotten teeth • Interviewee may be attending school sporadically or provides vague testimony on schooling • Interviewee may refer to non-family members with family titles (uncle, aunt, cousin) • Interviewee may display symptoms of disorientation and confusion 	<ul style="list-style-type: none"> • How do you get money to purchase items? • Where do you sleep? • How many people live in the same house? • Who are the other people? • What would happen if you left your caregiver /work without permission?
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Other Materials – 15

Safety Assessment (if interviewee alone and expresses fear)

<u>Indicators</u>	<u>Suggested Questions</u>
<ul style="list-style-type: none"> • Interviewee displays heightened general sense of fear • Interviewee reveals having been physically harmed • Interviewee shares having been deprived of: Food, water, sleep, medical care and/or other life necessities • Interviewee shares having been threatened with harm to him or herself or their family • Interviewee has been threatened with removal or reporting to immigration/ police 	<ul style="list-style-type: none"> • Do you feel safe right now? • Is there anyone you are concerned about? • Anyone who is making you feel uncomfortable or stressed? • What is your understanding of why you are here right now? • How did you get here today?

officials	
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<ul style="list-style-type: none"> • <u>Other Materials – 16</u> • Stages of Trafficking • Four sets of circumstances through which RAIO officers may detect indicators of trafficking and initiate component specific trafficking procedures: 	
<ul style="list-style-type: none"> • Ongoing trafficking/At risk 	<ul style="list-style-type: none"> • Officer detects indicators of ongoing trafficking from interviewee in interview and believes the interviewee is currently being exploited.
<ul style="list-style-type: none"> • Past trafficking • Unrelated to claim • Not in imminent danger in U.S. 	<ul style="list-style-type: none"> • Officer detects indicators of trafficking-related violations from interviewee's testimony and/or application, trafficking circumstances are unrelated to interviewee's immigration benefit request, and interviewee is no longer in exploitative situation.
<ul style="list-style-type: none"> • Past trafficking • Related to claim • Not in imminent danger in U.S. 	<ul style="list-style-type: none"> • Officer detects indicators of trafficking-related violations from interviewee's testimony and/or application, these violations relate directly to the immigration benefit the interviewee is seeking, and interviewee is no longer in exploitative situation.
<ul style="list-style-type: none"> • Return to field office/r (Trafficking POC) for follow-up 	<ul style="list-style-type: none"> • Supervisory, Quality Assurance, and/or Headquarters review detects indicators of trafficking through intra-office or HQ case review.

SUPPLEMENT A – INTERNATIONAL AND REFUGEE ADJUDICATIONS

The following information is specific to international and refugee adjudications. Information in each text box contains adjudication-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

- 1.
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

International and Refugee Adjudications Supplement

Module Section Subheading

SUPPLEMENT B – ASYLUM ADJUDICATIONS

The following information is specific to asylum adjudications. Information in each text box contains adjudication-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. All Supplemental Materials
- 2.

ADDITIONAL RESOURCES

- 1.
- 2.

SUPPLEMENTS

Asylum Adjudications Supplement

The TVPRA and Asylum

As noted earlier, the 2008 TVPRA significantly impacted asylum field policy and procedures when USCIS was accorded initial jurisdiction over asylum applications filed by unaccompanied minors, a particularly vulnerable demographic within the U.S. immigrant population.⁴⁰ Further, in the asylum context, USCIS responds to the TVPRA mandate to provide victims of trafficking information on the rights and services afforded to them, by providing informational pamphlets regarding these benefits to interviewees. Officers will not be trained nor expected to “identify” a victim of trafficking for the purpose of determining his or her eligibility for other forms of immigration relief. Officers may provide potential victims, who are not in imminent risk, with specific, authorized, informational pamphlets that apprise individuals of benefits for which they may be eligible. Officers should not give advice or provide any other information about the interviewee’s situation or claim for asylum outside of giving them these informational materials.

The following informational pamphlets are available for dissemination: Department

⁴⁰ For additional information, please refer to RAIO Training module, *Children’s Claims*.

of Justice pamphlet, [*Office for Victims of Crime – Funded Grantee Programs to Help Victims of Trafficking*](#), and USCIS pamphlet, [*Immigration Options for Victims of Crime*](#).

Asylum Adjudications Supplement

Trafficking in the Credible and Reasonable Fear Process

In the Credible and Reasonable Fear screening context, officers will have the opportunity to question the interviewee alone, without a third party present, and may be able to elicit more information from an individual at risk of ongoing trafficking, without compromising the victim's safety.

Asylum Adjudications Supplement

Trafficking Experiences and One-Year Filing Deadline

An interviewee may apply for asylum or refugee status with one basis of claim, e.g. political opinion, but may describe a trafficking-related experience, either in his or her country of origin or in the United States, that materially relates to his or her asylum eligibility. One example of this would be an individual who flees persecution in the home country, arrives in the United States without resources, and finds employment as a domestic servant with an employer who controls and exploits them. This individual may become freed several years after arrival in the United States and pursue an asylum benefit at that time. If the adjudicating officer elicits relevant testimony and applies the appropriate trafficking lens to analyze the conditions the interviewee faced upon arrival in the United States, depending on the circumstances, the officer may find an extraordinary circumstance exception to the one-year filing deadline.

Asylum Adjudications Supplement

Affirmative Asylum Procedures Manual

Section III.B.14. Trafficking Victims⁴¹

The Trafficking Victims Protection Act (TVPA) guarantees certain rights, services, and protections to victims of severe forms of trafficking.

⁴¹ The language in this supplement was preliminarily cleared by OCC in March 2012.

The TVPA defines a victim of a severe form of trafficking as a person subject to:

(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.

While [officers within the RAIO Directorate] are not responsible for making a determination as to an applicant's status as a victim of trafficking, [they] can play a key role in the protection of victims and in the prosecution of traffickers by detecting indicators of trafficking during an applicant's testimony and bringing cases of possible trafficking victims to the attention of ICE officials.

If the potential victim is a child filing for asylum as a principal applicant, the [officer] should consult Section III.B.1, Children Filing as Principal Asylum Applicants, for additional guidance.

Each Asylum Office Director must designate a Supervisory Asylum Officer (SAO) as the point of contact (POC) for human trafficking matters for their office. This POC will serve as the principal liaison between the asylum field office and the ICE POC during the trafficking referral process outlined below. In the event that the SAO Trafficking POC is unavailable when a trafficking-related situation arises, all SAOs must be trained and prepared to serve as back-up POCs.

The [officer] must differentiate between a suspected current trafficking situation, where the applicant may be in immediate danger because he or she is a possible or self-declared victim of current trafficking, and a possible or self-declared victim of past trafficking.

[Officers] encountering possible victims of human trafficking during the course of an asylum adjudication must follow this five step process: 1) detection, 2) notification, 3) referral, 4) information providing, and 5) tracking.

Step 1- Detection:

In the course of an asylum interview, an [officer] should be aware of the indicators of human trafficking. For a reminder of possible indicators of trafficking, please consult the [RAIO Training module, *Detecting Possible Victims of Trafficking*].

Once an [officer] suspects that an applicant has been or is currently being trafficked, he or she should ask follow-up questions to elicit more information without alerting the applicant or any individuals accompanying the applicant of the

concern.

Facts related to the suspected trafficking should be documented in the interview notes. The [officer] should specifically annotate whether he or she thinks the applicant is currently a victim of trafficking who may be in imminent danger and/or has been trafficked in the past and is no longer in imminent danger.

If the applicant is a minor, the [officer] should consult Section III.B.1, Children Filing as Principal Asylum Applicants, to ensure that his or her inquiry is child sensitive and that it includes questions concerning the minor applicant's care and custody situation, as well as whether the parents are aware of and approve of the asylum application.

Step 2- Notification:

Once the [officer] has identified through line of inquiry indicators that an applicant has been or continues to be a victim of trafficking, the [officer] must alert and discuss the suspicion and indicators of trafficking with the designated SAO POC.

The [officer] should complete the "Victims of Trafficking Memo to File," located at the end of the [RAIO Training module, *Detecting Possible Victims of Trafficking*], and provide an electronic copy to the SAO POC.

If the potential victim is a minor principal applicant, Asylum Office management must be alerted and the case must be reported to the HQASM QA mailbox. See Section III.B.1, Children Filing as Principal Asylum Applicants. HQASM will instruct on whether the Asylum Office should proceed with drafting an assessment and, if necessary, submitting a QA referral packet or whether the Asylum Office should postpone such action while issues related to the minor's care and custody situation are being addressed.

Step 3- Referral:

The Asylum SAO POC will determine the timing and method of a referral to ICE in the case of a possible victim of trafficking based on whether he or she believes the applicant is currently being trafficked and faces any imminent danger.

In instances where the [officer] and SAO POC believe the applicant is currently a victim of trafficking and is possibly in danger, referral to ICE is immediate.

The SAO POC makes a referral to ICE by phone while the applicant is still in the Asylum Office.

The SAO POC relays the indicators of trafficking to the ICE agent and together

they form a plan for action.

The applicant should not be alerted to the fact that an ICE agent is being called, unless the SAO POC can confirm that the applicant is not in danger and is not accompanied by anyone who poses a risk to the applicant. The timing and method of the ICE response will vary based on the [officer's] and SAO POC's perception of the imminent risk faced by the applicant. Further, the overall accessibility of ICE units may vary nationwide.

The SAO POC must use the following means, in the order listed below, to ensure an immediate verbal referral to an ICE agent in these situations.

Call the individual field office's pre-established ICE POC, the Supervisor of an ICE Human Trafficking and Smuggling Unit, located in the proximity of the Asylum Office.

If the ICE POC is not responsive, call the ICE National Directory (X- Sector) at 1-800-XSector and ask to speak with the supervisor of the Human Trafficking and Smuggling Unit in that city. If X-Sector does not have that information, the SAO POC should request the duty agent in the closest ICE field office.

If the SAO POC is unable to reach an agent through either of these mechanisms, he or she should contact the Trafficking POC at HQASM.

Note: If the potential applicant is a minor, ICE's internal policy dictates that they respond immediately regardless of whether the individual is in a dangerous situation.

In instances where the [officer] and the SAO POC do not believe that the applicant is currently being trafficked and is not in imminent danger, the referral to ICE will involve the SAO POC sending the local ICE Assistant Special Agent in Charge (ASAC) a copy of the memo to file via email or fax for his or her records.

If the applicant's case has already been investigated by ICE, there would be no need to refer the case, unless the affirmative asylum interview revealed information that raised new or additional concerns.

In addition to notifying ICE, the Trafficking Victims Protection Act (TVPA) requires that federal, state, and local officials notify the Department of Health and Human Services (HHS) within 24 hours of the discovery of a person who is under 18 years of age (whether accompanied or not) who may be a victim of a severe form of trafficking in persons. (TVPA § 107(b)(1)(G); 22 USC 7705(b)(91)(G)) This is so that HHS can provide interim assistance to any such individual. If [officers] encounter an asylum applicant under 18 years of age whom they discover may be a victim of a severe form of trafficking in persons, they should inform their office's POC for unaccompanied alien children's issues (UAC POC). The UAC POC must send an e-mail to the HHS Office of Refugee Resettlement (ORR) at

ChildTrafficking@acf.hhs.gov or call 202-205-4582. An e-mail should contain as much of the following information as possible:

Standard subject line: USCIS Notification to HHS of Discovery of a Person Who is under 18 Years of Age Who May Be a Victim of a Severe Form of Trafficking in Persons

Body:

Pursuant to section 107(b)(1)(G) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), this e-mail serves as notification to the Department of Health and Human Services that U.S. Citizenship and Immigration Services has discovered the following person who is under 18 years of age who may be a victim of a severe form of trafficking in persons:

1. Alien number:
2. Name:
3. Date of birth:
4. Country of citizenship:
5. Residence address:
6. Location of exploitation:
7. Suspected form of trafficking:
8. Represented by:
9. USCIS contact information:
10. Additional notes

An ORR Child Protection Specialist will respond to each notification during regular business hours, Monday through Friday, and will follow up with the reporting official as appropriate. Follow-up will involve facilitating interim and long-term eligibility, where applicable, and providing technical assistance as needed.

Step 4- Providing Information to Possible Victims of Trafficking:

[Officers] must provide possible victims of trafficking with the following informational pamphlets. These pamphlets outline the trafficking-specific immigration benefits and the contact information of service providers who assist victims of trafficking.

These pamphlets must only be given to an applicant if the [officer] and the SAO POC are certain that the applicant is no longer at risk of trafficking and/or that the providing of this information to the applicant (who may be accompanied by persons involved in the trafficking) would not put the applicant in danger.

The [officer] will provide the applicant with the following:

- 1) USCIS “Immigration Remedies for Victims of Violence” brochure;
- 2) DOJ Office of Victims of Crime list of federally funded anti-trafficking non-governmental organizations that operate across the United States;
- 3) HHS National Human Trafficking Resource Center hotline number (National Directory for all trafficking-related referrals): 1-888-373-7888.

Step 5- Tracking:

The [officer] completes the “Victims of Trafficking Memo to File,” located at the end of the RAIO Combined Training Trafficking Lesson Plan, places a copy on the right-hand side of the A-file, and provides an electronic copy to the SAO POC.

Once this has been done, the [officer] processes the asylum case as usual.

Asylum Adjudications Supplement

Sample Victims Of Trafficking Memo To File

Alien number:

Interview Date:

Asylum Officer (name, no.):

Consulted with (SAO, Trafficking POC):

Location:

Adjudication: Affirmative Asylum

Attorney name:

Preparer name:

Preparer address:

Interpreter name:

Applicant full name:

Gender: F

Country: Ethiopia

Age: 45

I. BIOGRAPHIC/ENTRY INFORMATION

Applicant was employed by a Saudi Arabian Family (*NAME*) as a domestic servant from 19xx until she came to the United States on *ARRIVAL DATE*. Applicant used an agency in Ethiopia to contract with this employer as a maid. Applicant entered the United States at Washington D.C. with this family. She told her supervisor that she wanted her passport. When he refused, she told him that she would call the police; so, he gave it to her. While the family rested, she left the house, called her friend in California, and never returned to this family.

II. SOURCE OF TRAFFICKING SUSPICION

Is this a past or present, ongoing trafficking concern? Past trafficking concern

III. WHAT FORMS OF TRAFFICKING DOES THE AO SUSPECT?

Applicant was contracted as a maid to clean the house and help raise the children. However, she was forced to work at any hour of the day and at multiple people's homes. Applicant stated she was not allowed to leave the house alone and could only go with the family. Applicant was also raped repeatedly by a supervisor who was hired to watch over Applicant and the other maids. If Applicant fought back, she stated she would be deported to Ethiopia. At one point she became pregnant as a result of the rapes, and made an excuse to return to Ethiopia to have an abortion. Applicant stated she could not have an abortion in Saudi Arabia, as they would find her at fault for being raped and pregnant.

IV. WHAT ACTIONS HAS THE ASYLUM OFFICE TAKEN?

Applicant was given the brochure of DHS/CIS information about trafficking and a packet of resources of NGOs that may be able to help her. Applicant was also represented by an attorney.

Please include copy of memo to file in A file and send electronically to Office Trafficking POCs NAMES.