



**PROGRAM LETTER 05-2
(Superseding Program Letter 02-5)**

TO: All LSC Program Directors

FROM: Helaine M. Barnett, President *HMB*

DATE: October 6, 2005

RE: Eligibility of Immigrant Victims of Severe Forms of Trafficking and Family Members for Legal Services

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Helaine M. Barnett

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Introduction

This Program Letter defines those situations where, by virtue of the Trafficking Victims Protection Act of 2000 (TVPA) (P.L. No. 106-386) as amended by the Trafficking Victims Protection Reauthorization Act of 2003, Legal Services Corporation (LSC) grantees are authorized to use either LSC or non-LSC funds to represent individuals that the grantees would otherwise be unable to represent due to the alien eligibility provisions of 45 CFR 1626. This Program Letter supercedes Program Letter 02-5, incorporates the 2003 amendments to include provision of legal services to certain family members of victims of trafficking, and clarifies the permissibility and limits of providing legal services to victims and family members.

The Trafficking Victims Protection Reauthorization Act of 2003 amended the TVPA by expanding its coverage to include certain family members of victims. The trafficking of women, children and men into the United States for sex crimes, sweatshop labor, involuntary domestic servitude, and migrant agricultural labor is estimated to affect between 14,500 and 17,500 individual victims annually. Congress enacted the TVPA in October 2000 to address this problem. Section 107(b)(1)(B) allows victims of trafficking to be determined to be eligible for legal assistance from LSC grantees without regard to their immigration status. The 2003 Reauthorization expands permissible representation by LSC grantees to include certain family members of victims of trafficking.

Under the statutory provisions of the TVPA, as amended, LSC grantees may represent victims of trafficking and their family members without regard to their immigration status as set forth in this Program Letter. Such representation and legal services may include assistance in obtaining certification and/or a visa as well as providing assistance with other legal issues. The scope of permissible representation is summarized below and explained in greater detail in the question-answer format that follows.

Summary of Permissible Representation by LSC Grantees

- Adult Victims of Trafficking
 - May provide representation in the certification process
 - May provide representation with legal issues unrelated to trafficking
 - Must discontinue representation if the victim is denied certification and is not otherwise eligible for assistance

- Victims of Trafficking who are under the age of 18
 - No certification available or necessary for victims under 18
 - May provide representation without HHS letter of eligibility
 - May provide representation to obtain an eligibility letter
 - May provide representation with legal issues unrelated to trafficking

- Family Members of Victims of Trafficking
 - May provide representation to a spouse and/or children of an adult victim (age 21 or older)
 - May provide representation to spouse, children, unmarried siblings under the age of 18 and parents of a child victim (under the age of 21)
 - May provide representation with an application for a derivative T nonimmigrant visa
 - May provide representation with legal issues unrelated to trafficking
 - Must discontinue representation if the family member is denied a T visa and is not otherwise eligible for assistance

Who are victims of trafficking?

The TVPA covers victims who are trafficked by force or fraud into the commercial sex industry as well as those individuals who are exploited for their labor. Specifically, victims of trafficking are defined in the TVPA as persons who have been subject to sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained the age of 18; or 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.

May LSC grantees represent victims of trafficking?

Yes. LSC grantees may represent victims of trafficking with any legal issue in which the grantee would otherwise provide legal services or representation. To be eligible for representation and legal services from an LSC grantee, a victim of trafficking must be under 18 years of age or be a “subject of a certification” under the TVPA.

How does an adult victim of trafficking become a “subject of a certification” under the Act?

Only adult victims need to receive certification letters from the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement in order to access certain federally funded benefits and services. The adult victim may initiate the certification process by applying to the Department of Homeland Security (DHS) for a T nonimmigrant visa. In the alternative, a federal law enforcement agency may initiate the certification process by seeking a grant of “continued presence” status from DHS for the victim of trafficking. Continued presence is a temporary immigration status that DHS may grant to a victim of trafficking during the course of a criminal investigation or prosecution of the trafficker(s). The T nonimmigrant visa is a special visa for victims of trafficking and their family members.

Once DHS grants continued presence status or issues a letter stating that the victim has made a bona fide application for a T visa, HHS issues the adult victim of trafficking a certification letter.

How should LSC grantees verify that an adult victim of trafficking has been certified?

An adult victim of trafficking seeking representation and legal services should submit a copy of his or her certification letter as documentation of eligibility for legal services, receipt of which should be noted in the case file. In the absence of the certification letter, the LSC grantee (e.g., intake worker) should verify the victim of trafficking’s certification status by calling the HHS trafficking verification line at (202) 401-5510 or (866) 401-5510 to confirm that HHS has issued a certification letter and note the telephone call and the response in the case file.

May LSC grantees provide representation and legal services to adult victims of trafficking in the certification process?

Yes. LSC grantees may assist an adult victim with the certification process. LSC grantees may represent and provide legal services to an adult victim in applying to DHS for a T visa or by advocating on behalf of the victim that a federal law enforcement agency apply to DHS for continued presence status. LSC grantees should document in the case file the grantee’s determination that the client meets the definition of an adult victim and is eligible for and is seeking assistance with certification.

May LSC grantees provide representation and legal services to victims of trafficking who are under 18 years of age?

Yes. LSC grantees may assist children under the age of 18 who meet the definition of a child victim under the TVPA without any form of certification.

Victims of trafficking under 18 years of age do not need to be certified, although HHS issues eligibility letters to child victims of trafficking so they may access certain government welfare benefits. LSC grantees also may provide representation and legal services to a victim under age 18 in an effort to obtain such an eligibility letter and with legal issues unrelated to their status as a victim of trafficking.

How should LSC grantees document that a victim under the age of 18 meets the definition of a child victim?

LSC grantees should document in the case file the grantee's determination that the child meets the definition of a child victim of trafficking; or, if the child has obtained an eligibility letter, the grantee should include a copy of the child's eligibility letter issued by HHS or make a notation that the letter has been reviewed.

May LSC grantees provide representation to family members of victims of trafficking?

Yes. LSC grantees may assist certain family members of victims of trafficking. For victims of trafficking who are under the age of 21, the victim's spouse, children, unmarried siblings under the age of 18, and parents are considered family members. For victims who are 21 years of age or older, only the victim's spouse and children are considered family members.

How should LSC grantees verify the visa status of non-citizen family members of victims of trafficking?

The family member seeking assistance should submit documentation that immigration authorities have issued him or her a derivative T nonimmigrant visa under the Immigration and Nationality Act, § 101(a)(15)(T)(ii). Acceptable documents include: I-94 coded T-2, T-3, T-4, or T-5; Form I-797 Notice of Action indicating approval of T-2, T-3, T-4, or T-5 status; employment authorization document coded (c)(25); or any other document indicating the grant of T nonimmigrant status. LSC grantees should place a copy of the documentation in the case file or make a notation that the documentation has been reviewed.

May LSC grantees provide representation and legal services to family members of victims of trafficking with the process of applying for a derivative T nonimmigrant visa?

Yes. LSC grantees may assist family members with the process of applying for a derivative T nonimmigrant visa.

If a victim of trafficking or a family member has applied for or sought representation and legal services with the process of applying for certification or a derivative T nonimmigrant visa, may the LSC grantee also provide representation and legal services with other legal issues?

Yes. If an LSC grantee is representing an adult victim of trafficking in obtaining certification or a family member in obtaining a visa, or if the victim or family member has otherwise applied for certification or a visa, the LSC grantee may represent that person in connection with other legal issues, without having to wait for certification or issuance of the derivative T nonimmigrant visa. For example, a grantee may begin to represent a victim or a victim's family member in a case seeking an order of protection, a housing matter, or a wage claim at the same time the grantee begins to provide representation and legal services to the victim of trafficking or family member in the certification or visa process.

May an LSC grantee representing a victim of trafficking in the certification process or a family member in the application process for a derivative T nonimmigrant visa continue representation if certification or the visa is denied?

No. If the client is ultimately denied certification or denied a derivative visa and is not otherwise eligible for legal services under the provisions of 45 CFR Part 1626, the grantee must discontinue representation, consistent with local rules of professional responsibility.