



April 15, 2015

PM-602-0107

Policy Memorandum

SUBJECT: New T Nonimmigrant Derivative Category and T and U Nonimmigrant Adjustment of Status for Applicants from the Commonwealth of the Northern Mariana Islands

Purpose

This policy memorandum (PM) provides guidance on legislation affecting the T nonimmigrant status program and related T and U nonimmigrant adjustment of status applications. This PM revises Chapters 23.5 and 39.2 of the Adjudicator's Field Manual (AFM); AFM Update AD14-05.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all U.S. Citizenship and Immigration Services (USCIS) employees.

Authorities

- Sections 809 and 1221 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013)
- Immigration and Nationality Act (INA) section 101(a)(15)(T)
- Section 705(c) of the Consolidated Natural Resources Act of 2008, 48 U.S.C. 1806 note

Background

On March 7, 2013, President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) into law. USCIS has responsibility for administering certain provisions of VAWA 2013. Title VIII and XII of VAWA 2013 expand the immigration relief for individuals who are victims of human trafficking. Except where noted below, the relevant VAWA 2013 provisions took effect on March 7, 2013. This PM summarizes the two major legislative changes of VAWA 2013 with respect to T and U nonimmigrants, and directs USCIS officers to apply these provisions to requests for T and U nonimmigrant status and related adjustment of status.

Policy

New Derivative Category: T-6 Nonimmigrants

A. Background

The INA allows a principal T nonimmigrant (the victim of a severe form of trafficking in persons, or T-1) to request derivative status for certain family members. The following describes the two categories of family members who may be eligible for derivative T nonimmigrant status if accompanying, or following to join, the principal.

- 1) Family members whose eligibility is based on the age of the principal:
 - o Where the principal is under 21 years of age, the principal's spouse (T-2), child (T-3), parent (T-4), and/or unmarried siblings under 18 years of age (T-5) may be eligible.¹
 - o Where the principal is over 21 years of age, the principal's spouse (T-2), and/or child (T-3) may be eligible.²
- 2) Family members whose eligibility is based on a showing of a present danger of retaliation as a result of the principal's escape from the severe form of trafficking in persons or cooperation with law enforcement (regardless of the age of the principal):
 - o The principal's parent (T-4) and/or unmarried siblings under 18 years of age (T-5) may be eligible.³
 - o The adult or minor child of a derivative beneficiary of the principal (T-6) may be eligible.⁴

Section 1221 of VAWA 2013 expanded the derivative category based on present danger of retaliation to include children (adult or minor) of the principal's derivative family members if the derivative's child (adult or minor) faces a present danger of retaliation as a result of the principal alien's escape from trafficking or cooperation with law enforcement.

¹ See INA section 101(a)(15)(T)(ii)(I). The principal's spouse, children, and parents were included in the creation of the T nonimmigrant status. Trafficking Victims Protection Act (TVPA), Pub. L. 106-386 (Oct. 28, 2000). The principal's siblings were added in 2003. Trafficking Victims Protection Reauthorization Act (TVPRA 2003), Pub. L. 108-193 (Dec. 19, 2003).

² See INA section 101(a)(15)(T)(ii)(II). The principal's spouse and children were included in the creation of the T nonimmigrant status. TVPA, Pub. L. 106-386 (Oct. 28, 2000).

³ INA section 101(a)(15)(T)(ii)(III). Parents and siblings whose eligibility is not connected to the age of the principal, but whose eligibility is based on a present danger of retaliation, were added in 2008. Trafficking Victims Protection Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (Dec. 23, 2008). USCIS implemented this change by PM; USCIS-PM 602-0004, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions*, (July 21, 2010).

⁴ INA section 101(a)(15)(T)(ii)(III) as amended by VAWA 2013. USCIS has assigned T-6 as the code of admission for these family members.

Along with the introductory language of INA section 101(a)(15)(T)(ii), the amended language of INA section 101(a)(15)(T)(ii)(III) therefore reads:

If accompanying, or following to join, the alien described in clause (i)⁵—any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien⁶ described in subclause (I) or (II)⁷ who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien’s escape from the severe form of trafficking or cooperation with law enforcement.

This new category is unique in that it allows for expanded eligibility beyond the categories of family members who typically may be eligible for derivative status. This category of derivatives does not have close parallel in any other immigrant or nonimmigrant benefits. In practical terms, these family members would generally be the principal’s grandchild,⁸ the principal’s spouse’s child (if not otherwise already eligible as the principal’s child), the principal’s sibling⁹ (if not otherwise already eligible, such as those over the age of 18 or married), and the principal’s niece or nephew.¹⁰

B. Legal Interpretation and Analysis

In order to interpret and implement this unique provision, USCIS must look to the plain meaning of the statute by first looking at the words of the statute and applying their usual and ordinary meanings. However, the amendatory language “adult or minor children of a derivative beneficiary” does not rely on statutorily defined terms and well-established immigration terms of art.

Meaning of “adult or minor child”

Usually the term “son or daughter” is a term of art meaning a child who is married and/or over the age of 21, while “child” means a child who is unmarried and under the age of 21. “Adult child” is not a term used in the INA or in other immigration contexts. “Minor” may have different meanings in different contexts. USCIS construes the meaning of the language “adult or minor children” to encompass both the “son or daughter” and “child” immigration definitions. Therefore, persons of any age and any marital status are “adult or minor children” and may be eligible for T-6 derivative status.

⁵ This is the principal.

⁶ There seems to be a drafting error by Congress, causing a grammatical error and unclear text. This PM construes the provisions as USCIS believes Congress intended them to mean.

⁷ Citing to the alien described in (I) or (II) is another reference to the principal because (I) and (II) begin with the phrase “in the case of an alien described in clause (i).” This also establishes the fact that this category is not based on the age of the principal, but on the present danger of retaliation.

⁸ The principal’s child’s child.

⁹ The principal’s parent’s child.

¹⁰ The principal’s sibling’s child.

Meaning of “derivative beneficiary”

The language “adult or minor children *of a derivative beneficiary*” plainly requires the T-6 family member to establish eligibility through his or her relationship to the derivative beneficiary of the principal. In order to establish this eligibility, USCIS considered the meaning of the term “derivative beneficiary” and whether the statute requires the derivative beneficiary of the principal to have been granted derivative T nonimmigrant status him or herself.

Moreover, the phrase “derivative beneficiary” plainly means someone who has *derived* status as a family member (under INA section 101(a)(15)(T)(ii)) and who has *benefited* from the qualifying relationship to the principal. This means that a derivative beneficiary is a family member described in 101(a)(15)(T)(ii)(I) and (II) who has been granted derivative T nonimmigrant status. Therefore, the “derivative beneficiary” must have derived T-2, T-3, T-4 or T-5 nonimmigrant status through the principal in order for the derivative beneficiary’s child (adult or minor) to be eligible for the new T-6 category.

In addition, the full language and organization of INA section 101(a)(15)(T)(ii) which is introduced with the phrase “if accompanying or following to join”¹¹ the principal, supports this interpretation. This introductory phrase limits the subsections of (ii) to the derivative who is “accompanying or following to join” the principal. A person cannot be a derivative beneficiary if he or she is not accompanying or following to join the principal. Therefore, if the parent of the adult or minor child (new T-6 category) did not accompany or follow to join the principal by receiving derivative T nonimmigrant status, he or she cannot be considered a derivative beneficiary. And with no derivative beneficiary, the adult or minor child is not eligible for the T-6 classification.

Such an interpretation is supported in other immigration contexts, which provide a basis to understand the relationship between a derivative and the person through whom that individual derives status. For example, in the family immigration context, U.S. citizens can petition directly for immediate relative beneficiaries (visas are immediately available for immediate relatives to be granted lawful permanent residence). U.S. citizens and lawful permanent residents can petition for certain other family members to receive a preference classification (the number of visas is statutorily capped and most beneficiaries must wait for a visa to become available). Unlike immediate relative petitions, preference classification petitions may include derivative beneficiary family members granted a preference classification who can accompany or follow to join the principal. A derivative beneficiary is eligible for the benefit based solely on having a qualifying relationship to the principal beneficiary and is “entitled to the same status, and the same order of consideration...if accompanying or following to join.”¹²

¹¹ In the immigration context, “accompanying” refers to a dependent (spouse and children of the principal beneficiary of a family based visa petition) who is immigrating concurrently with, or who has an immigrant visa issued within 6 months after, the principal’s admission or adjustment of status. “Following to join” refers to an alien who is immigrating more than 6 months after the principal alien, but based on a relationship which existed at the time of the principal’s immigration, provided that the relationship still exists at the time of the dependent’s application for admission to the United States.

¹² Definition found on www.uscis.gov and based on INA section 203(d).

While the family immigration process differs from the T nonimmigrant process, USCIS relies on this parallel context to inform the interpretation of the eligibility requirements for the T-6 derivatives. Essentially, the family member *derives* status through the principal. What is unique about the T nonimmigrant context is that Congress created the T-6 classification through a relationship to a derivative, instead of directly to a principal, as it is in other immigration benefits.

Establishing a qualifying relationship between the T-6 family member and his or her parent is not sufficient to derive eligibility as a T-6, if the T-6's parent never held T nonimmigrant status as a T derivative beneficiary. In order to be eligible for T-6 classification, the adult or minor child must establish the qualifying relationship to his or her parent who actually derived T nonimmigrant derivative status through the principal beneficiary.

Although there is no formal legislative history for VAWA 2013 to illustrate the intent of the new classification, there is reference to Congressional intention in a report regarding a section of a previous bill¹³ containing the identical language amending INA section 101(a)(15)(T)(ii) that was later enacted in VAWA 2013.¹⁴ This report states that the relevant language “*modestly* augments the list of eligible relatives who may file as a derivative beneficiary of a “T” visa holder” (emphasis added).¹⁵ Allowing eligibility for T-6 classification based only on the existence of a qualifying relationship between the adult or minor child and the family member who may qualify as the principal's derivative beneficiary, but did not actually derive T nonimmigrant derivative status, would greatly increase the list of eligible relatives and not be in keeping with Congress' intent that derivative beneficiaries be increased modestly.

C. Eligibility for the New Derivative Category

For the reasons described above, USCIS interprets the new derivative category to require:

- Establishing the familial relationship between the T-6 family member and his or her parent;
- That the T-6 family member's parent has been granted T-2, T-3, T-4, or T-5 status as the principal's derivative beneficiary; and
- Establishing that the T-6 family member faces a present danger of retaliation as a result of the principal's escape from trafficking or cooperation with law enforcement.

¹³ S. 1301 in the 112th Congress.

¹⁴ Trafficking Victims Protection Act of 2011, S. Rep. 112-96 (Nov. 17, 2011).

¹⁵ *Id.* at 14.

This chart illustrates how the new category of family members can derive T-6 status.

If	And	Then
You are a T-1 principal under the age of 21	Your spouse is, was, or will be granted T-2	Your spouse's child of any age ¹⁶ can derive T-6 status based on present danger of retaliation
	Your child (under the age of 21 and unmarried) is, was, or will be granted T-3	Your child's child of any age can derive T-6 status based on present danger of retaliation
	Your parent is, was, or will be granted T-4	Your parent's child of any age can derive T-6 status based on present danger of retaliation
	Your sibling (under the age of 18 and unmarried) is, was, or will be granted T-5	Your sibling's child of any age can derive T-6 status based on present danger of retaliation
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You are a T-1 principal over the age of 21	Your spouse is, was, or will be granted T-2	Your spouse's child of any age ¹⁷ can derive T-6 status based on present danger of retaliation
	Your child (under the age of 21 and unmarried) is, was, or will be granted T-3	Your child's child of any age can derive T-6 status based on present danger of retaliation
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You are a T-1 principal alien of any age	Your parent is, was, or will be granted T-4 based on present danger of retaliation	Your parent's child of any age can derive T-6 status based on present danger of retaliation
	Your sibling (under the age of 18 and unmarried) is, was, or will be granted T-5 based on present danger of retaliation	Your sibling's child of any age can derive T-6 status based on present danger of retaliation
<p><i>Notes:</i> The derivatives of the T-1 listed in the second column can currently hold status, have a pending application that will be approved before or with the application for the T-6, or have held status in the past (with some exceptions). Where ages are listed in this chart, they refer to age at the time of the principal alien's filing for T-1 status. T-6 family members are eligible regardless of marital status. There is no T derivative status for children (or other family members) of the adult or minor child who is granted T-6 status.</p>		

¹⁶ Assuming he or she was not already eligible as your child T-3 derivative beneficiary for some reason. Stepchildren are included within the INA definition of child so long as the parents married when the spouse's biological child was under the age of 18. For example, this might be the biological child of the T-2 spouse who was not eligible as a T-3 because the marriage occurred after the T-2's biological child turned 18 years of age. This biological child of the T-2 may be eligible for T-6 status.

¹⁷ *Id.*

If the principal's derivative currently holds or was granted T-2, T-3, T-4, or T-5 status at some point, or the application is concurrently pending for the derivative beneficiary's status along with the application for T-6 status, then an adult or minor child of the principal's derivative beneficiary can derive T-6 status. The T-6's parent does not have to hold derivative status at the time of the T-6 application. USCIS recognizes that this category is based on "a present danger of retaliation" and different family members may face a danger of retaliation at different times.

For example, if the principal's spouse held T-2 status but then died before the principal files for T-6 status for the spouse's adult child, the adult child may still be eligible for T-6 status. Additionally, if a parent who had obtained T-4 status allowed his or her status to lapse without extending it, the principal could still file for T-6 status for the T-4 parent's adult or minor child if he or she faced a present danger of retaliation.

The plain language of the statute means that not every adult or minor child of a parent who may qualify as the principal's derivative beneficiary would be eligible as a T-6 derivative. If the potential T-6's parent never held T-2, T-3, T-4 or T-5 status and the parent is not eligible or available for such status concurrently, then the family member would not be eligible for T-6 status. The following examples illustrate this.

If a T-1 was not married to the mother or father of a child who is over the age of 21, that mother or father is not eligible for T-2 status. Therefore, there is no derivative T-2 through which the adult or minor child can derive status, and he or she would not be eligible for T-6 status. Additionally, if the T-1 principal's parent is deceased and never held T-4 status, then the parent's child (who is not eligible in some other way as the T-1's sibling) would not be eligible for T-6 status.

There is no statutory authority to extend derivative status to children (or other family members) of the adult or minor child who is granted T-6 status.¹⁸ In the example above, the sibling's adult or minor child could not simultaneously be eligible for T-6 status. That child would have to qualify through the sibling of the T-1, but the sibling would only be eligible for T-6 status and not T-5 status. Additionally, if the T-6 is married, there is no T derivative status for the T-6's spouse.

Furthermore, if derivative status was revoked under 8 CFR 214.11(s), eligibility for T-6 derivative status may be affected. Where the revocation ground relates to the derivative beneficiary's eligibility for derivative T nonimmigrant status, the adult or minor child of the derivative beneficiary may not be eligible for T-6 status. Without a derivative beneficiary parent who has obtained valid derivative T nonimmigrant status a potential T-6 family member would not be able derive T-6 status.

¹⁸ Such family members may be eligible for a form of parole or may eventually be eligible for some other immigration status through the family member granted T-6 nonimmigrant status.

However, where the revocation ground is not related to the derivative beneficiary's eligibility for derivative status, the adult or minor child may still be eligible for T-6 status. For example, one of the revocation grounds is for divorce. If the T-1's spouse held T-2 status but then the couple divorced and the T-2 status was revoked under 8 CFR 214.11(s)(iii), the adult or minor child of the T-2 may still be eligible for T-6 status. The divorce ground does not relate to eligibility when the derivative's application was approved, and is therefore different from other revocation grounds.

D. Application Process for the New Derivative Category

Described in detail below, the following summarizes the application process for the T-6 derivatives:

- A principal T-1 nonimmigrant files Form I-914, Supplement A, *Application for Immediate Family Member of T-1 Recipient*, for all derivatives, including the T-6 family members;
- Evidence submitted with the application for a T-6 family member must establish three things:
 - o The parent-child relationship between the T-2, T-3, T-4 or T-5 beneficiary and the T-6;
 - o The derivative status of the T-6's parent (pending, currently holds status, held status in the past); and
 - o The present danger of retaliation faced by the T-6 as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement; and
- If applicable, a Form I-192, *Application for Advance Permission to Enter as a Nonimmigrant*, is required to waive any grounds of inadmissibility.

The application process for the new T-6 family members will follow the same process as for the other derivative T nonimmigrants. The principal alien may file a Form I-914, Supplement A, on behalf of his or her derivative beneficiary's T-6 family members. The T-2, T-3, T-4, or T-5 does not file directly for his or her T-6 family member. The T-1 must file the Form I-914, Supplement A. A T-1 principal can file for all derivatives at the same time (although not required) to ensure quicker family unity and protection from harm.

However, just as derivative beneficiaries cannot be approved before a principal T-1, family members cannot be approved for T-6 status before the derivative beneficiary is approved for T-2, T-3, T-4, or T-5 status. If the derivative beneficiary is denied status, then the T-6 will also be denied. USCIS may approve all the family members in T-2 through T-6 status at the same time.

USCIS will amend the form to account for this derivative category expansion. Until that process is complete, applicants should leave "Part A. Family Member Relationship to You" blank if none of the prescribed categories apply to the family member and attach a sheet of paper detailing the relationship and requesting adjudication under the new VAWA 2013 derivative category.

If inadmissible based on a ground that may be waived, applicants must file a Form I-192, with supporting evidence. If Form I-914, Supplement A is approved, the derivative will be classified as a T-6 nonimmigrant (adult or minor child of a principal's derivative beneficiary).

Applicants must submit evidence that demonstrates the parent-child relationship of the family member to the principal's derivative beneficiary, the derivative status (pending, currently holds status, or approved in the past) of the T-2, T-3, T-4 or T-5 derivative beneficiary that the T-6 qualifies through, and the present danger of retaliation to the family member.

Present danger will be evaluated on a case-by-case basis. An applicant may submit a statement describing the danger the family member faces and how the danger is linked to the victim's escape from the severe form of human trafficking or cooperation with law enforcement. An applicant's statement alone, however, is not sufficient. Other examples of evidence may include: a previous grant of advance parole to a family member; a signed statement from a law enforcement agency (LEA) describing the danger of retaliation; trial transcripts, court documents, police reports, news articles, copies of reimbursement forms for travel to and from court; and affidavits from other witnesses. USCIS may contact the LEA involved in the criminal case, if appropriate. In determining when it may be appropriate to contact an LEA, USCIS recognizes that not every principal will be or is required to cooperate with an LEA. These may be cases in which USCIS would not use its discretion to contact an LEA.

Adjustment of Status for T and U Applicants from the Commonwealth of the Northern Mariana Islands (CNMI)

Section 809 of VAWA 2013 created a statutory fix for victims in the Commonwealth of the Northern Mariana Islands (CNMI) that applies equally to T and U nonimmigrants. This change was necessary because aliens are eligible to apply for T nonimmigrant status based on their physical presence in the CNMI.¹⁹ However, aliens in the CNMI had to travel to Guam or elsewhere in the United States to actually be admitted as a T nonimmigrant prior to the federalization of CNMI immigration law on November 28, 2009 (which occurred following the passage of Title VII of the Consolidated Natural Resources Act (CNRA) of 2008, Pub. L. 108-229), which effectively replaced the CNMI's immigration laws with the INA and other applicable United States immigration laws.²⁰ Even though physical presence is not a requirement for U nonimmigrant status, the fix applies to U nonimmigrants as well.

The adjustment of status provisions for both T and U nonimmigrants require three years of continuous physical presence in the United States since admission as a T or U nonimmigrant.²¹ Prior to the change, this could be problematic. For example, an approved T nonimmigrant in the CNMI would not accrue this time in the United States for purposes of adjustment of status until on or after November 28, 2009, when the CNRA took effect, and only if he or she was actually admitted to the United States. The CNRA included a rule of construction that time in the CNMI

¹⁹ INA section 101(a)(15)(T)(i)(II).

²⁰ See Title VII of the Consolidated Natural Resources Act of 2008, Pub. L. 110-229, 122 Stat. 754 (2008). Before November 28, 2009, the CNMI (although a U.S. territory) was not defined for INA purposes as part of the "United States." Effective on that date, INA section 101(a)(38) was amended to add the CNMI to the geographical "United States".

²¹ INA section 245(l)(1)(A).

before November 28, 2009, does not count as time in the United States (except for limited purposes).²²

VAWA 2013 adds a new exception to this rule, so that time in the CNMI, whether before or after November 28, 2009, counts as time admitted as a T or U nonimmigrant for establishing physical presence for purposes of adjustment of status to lawful permanent residence, as long as the time is subsequent to the grant of the application for T or U nonimmigrant status.²³ For example, when T or U nonimmigrant status was approved (i.e., the Form I-914 or Form I-918 was approved) for someone in the CNMI prior to November 28, 2009, the three year continuous physical presence required for adjustment of status began to accrue at the time of the grant of T nonimmigrant status, even if he or she was not actually admitted in T or U nonimmigrant status at that time, or subsequently.

Implementation

The Adjudicator's Field Manual (AFM) is revised as follows:

Chapter 23.5(n) Adjustment of Status by T Nonimmigrants

- ☞ 1. Chapter 23.5(n)(1)(B) "Physical Presence for a Requisite Period" is amended by adding at the end:

If the applicant was granted T nonimmigrant status and resided in the Commonwealth of the Northern Mariana Islands (CNMI), whether before or after November 28, 2009. For T nonimmigrants in the CNMI, the three year continuous physical presence required for adjustment of status begins to accrue when the application for T nonimmigrant status is granted, even if the applicant was not actually admitted in T nonimmigrant status.

Chapter 23.5(o) Adjustment of Status by U Nonimmigrants

- ☞ 2. Chapter 23.5(o)(1)(D) is added to be titled: "Physical Presence and the Commonwealth of the Northern Mariana Islands" and it will read:

A U nonimmigrant will not be considered to have failed to maintain continuous physical presence if the applicant was granted U nonimmigrant status and resided in the Commonwealth of the Northern Mariana Islands (CNMI), whether before or after November 28, 2009. For U nonimmigrants in the CNMI, the three year continuous physical presence required for adjustment of status begins to accrue when the application for U nonimmigrant status is granted, even if the applicant was not actually admitted in U nonimmigrant status.

²² See CNRA section 705(c).

²³ See VAWA 2013 section 809.

Chapter 39.2 T Nonimmigrants

☞ 3. Chapter 39.2(f)(1)(A) is revised to read:

Regardless of the T nonimmigrant principal's age, USCIS may grant derivative T nonimmigrant status to the principal's parents, unmarried siblings under 18 years of age, or the adult or minor children of a derivative beneficiary of the principal, if USCIS determines that the family member faces a present danger of retaliation as a result of the principal's escape from the severe form of trafficking or cooperation with law enforcement.

☞ 4. The AFM **Transmittal Memoranda** button is revised by adding a new entry, in numerical order, to read:

AD14-05 10/27/2014	Chapters 23.5 and 39	Adds guidance on the changes to the T and U nonimmigrant programs created by the Trafficking Victims Protection Reauthorization Act of 2013.
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Use

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Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Policy and Strategy, Family Immigration and Victim Protection Division.