

Recommendations for Legislation to Further Protect the Rights of Trafficked Persons MAY 2004

S U M M A R Y

Freedom Network (USA), which was established in 2001, is a coalition of 22 non-governmental organizations that provide services to, and advocate for the rights of, trafficking survivors in the United States. Since the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Freedom Network (USA) members have worked closely with trafficked persons to ensure that they receive necessary services guaranteed under the VTVPA and have also been engaged in monitoring implementation of the law.

Our collective experiences inform the following recommendations, which we believe are critical to protecting the rights of persons trafficked into the United States. We hope that you will support them also:

- All survivors of trafficking who have demonstrated that they are victims of a severe form of trafficking and are present in the United States should be permitted to remain in the United States if they comply with reasonable law enforcement requests OR would face extreme hardship upon removal.
- The law should clearly state that law enforcement officials are required to provide a “law enforcement agency” endorsement to a trafficked person when the person exhibits willingness to cooperate by offering information on a trafficking situation.
- All trafficked persons who come forward to cooperate with law enforcement should have the express right to legal counsel.
- The 3-year and 10-year bars to re-entry into the U.S. should be lifted for trafficking survivors.
- Trafficking survivors should be granted immediate eligibility for adjustment of status to permanent residence upon approval of the T visa.
- The “extreme hardship” requirement for families should be removed so that all trafficking survivors are able to reunite with their families as soon as possible.

Currently, Congress is examining a number of proposals for immigration reform. We have evaluated the following proposed bills:

- We support passage of the WISH Act (H.R. 2258).
- We support passage of the SOLVE Act (H.R. 4262, S. 2381).
- We oppose the CLEAR Act (H.R. 2671) and the Homeland Security Enhancement Act (S. 1906).
- We oppose the Undocumented Alien Emergency Medical Assistance Amendments Of 2004 (H.R. 3722).

Recommendations for Legislation to Further Protect the Rights of Trafficked Persons MAY 2004

Freedom Network (USA), which was established in 2001, is a coalition of 22 non-governmental organizations that provide services to, and advocate for the rights of, trafficking survivors in the United States. Since the enactment of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Freedom Network (USA) members have worked closely with trafficked persons to ensure that they receive necessary services guaranteed under the VTVPA and have also been engaged in monitoring implementation of the law. Our collective experiences inform the following recommendations, which we believe are critical to protecting the rights of persons trafficked into the United States. We hope that you will support them also:

- **All survivors of trafficking who have demonstrated that they are victims of severe forms of trafficking and are present in the United States should be permitted to remain in the United States if they comply with reasonable law enforcement requests OR would face extreme hardship upon removal.** Currently, victims must comply with reasonable requests from law enforcement AND face extreme hardship involving severe and unusual harm in order to stay in the United States. The vast majority of survivors of trafficking will eagerly comply with law enforcement requests whether they are required to do so or not. However, in limited circumstances, survivors of trafficking are unable to cooperate because they are emotionally and/or physically unable or in fear for their safety or the safety of their family members. These survivors should not be expected to cooperate, at least until they are emotionally stable, physically well and safe. In keeping with the humanitarian goals of the VTVPA, if survivors of trafficking have proven that they have escaped from slavery, are present in the United States on account of the slavery, and face extreme hardship upon removal, they should be permitted to remain here without being compelled to comply with law enforcement requests. Accordingly, we respectfully request that the Immigration and National Act be amended to permit survivors of trafficking to be eligible for T Visas if they face extreme hardship upon removal OR comply with reasonable law enforcement requests.
- **The law should clearly state that law enforcement officials are required to provide a “law enforcement agency” endorsement to a trafficked person when that person exhibits willingness to cooperate by offering information on a trafficking situation.** In many cases, trafficking survivors are willing to give information to law enforcement officials to pursue a criminal case against the trafficker. At that point, the trafficked person has shown a willingness to cooperate with law enforcement, and has met his or her requirement under the VTVPA. The law enforcement official should not unnecessarily withhold the endorsement until some later date or case milestone. Furthermore, the law enforcement official should not unnecessarily withhold the endorsement because the government does not wish to pursue an investigation or prosecution at that point in time.
- **All trafficked persons who come forward to cooperate with law enforcement should have the express right to legal counsel.** Such representation is critical because many trafficking survivors fear self-incrimination, prosecution and deportation, and counsel is in the best position to assert the rights of a trafficked person. Furthermore, it takes tremendous courage for trafficking victims to come forward and they should not be re-traumatized by the criminal legal process. Allowing trafficking victims to be represented by their own legal counsel minimizes re-traumatization.
- **The 3-year and 10-year bars to re-entry into the U.S. should be lifted for trafficking survivors.** Trafficking survivors who need to return home briefly to visit their families or for other reasons are often unable to do so because they are subject to the three and ten year bars to re-entry. Due to their acquiring ‘unlawful’ presence because of their lapsed or otherwise undocumented immigration status, trafficking survivors may not be permitted to re-enter the U.S. if they leave temporarily. Often, prosecutors are willing to send a trafficking survivor to their home country to visit his or her family, especially where such a visit will provide a much-needed boost to the trafficking survivor’s morale, or assurance that the family is safe—however, the current bars render this option unavailable for trafficking survivors.

- **Trafficking survivors should be granted immediate eligibility for adjustment of status to permanent residence upon approval of the T visa.** Trafficking survivors should not have to wait for 3 years to apply for legal permanent status and fully integrate into life in the U.S. The granting of a T visa sufficiently establishes the trafficking survivors need to access the protection and benefits of residence in the U.S. Requiring survivors to wait an additional 3 years serves only to increase their instability and fear.
- **The “extreme hardship” requirement for families should be removed so that all trafficking survivors are able to reunite with their families as soon as possible.** The VTVPA allows family members to come to the U.S. only if they would face extreme hardship if they are not allowed to join their trafficked family member who is in the U.S. If this requirement is not met, family members must wait 3 years until the T visa holder adjusts status to permanent residence and then an additional 5-10 years, depending upon country of origin, to be able to join their trafficked family member in the U.S. We believe that families should always be able to reunite regardless of whether the individual abroad would face extreme hardship if not permitted to join their loved one.

Currently, Congress is examining a number of proposals for immigration reform. We have evaluated the following proposed bills:

- **We support passage of the WISH Act (H.R. 2258).** We endorse passage of this bill because it would allow trafficking survivors greater access to public assistance as they pursue integration into a safe life in the U.S. By allowing T and U visa applicants to receive certain public benefits while their applications are pending, the passage of WISH would remove current barriers for victims of trafficking and sexual assault who need to access services to secure their safety. This would provide critical assistance for trafficked persons between their discovery and certification.
- **We support passage of the SOLVE Act (H.R. 4262, S. 2381).** This bill provides undocumented immigrants with a path to permanent legal status, reunites families separated by our convoluted family visa preference system, and reforms our employment-based visa system so that immigrant workers can come to fill demonstrated labor needs legally in the future. By legalizing more of the migrant flow and building in strong labor law compliance features in the work-based visa programs, this bill goes a long way toward fixing our broken immigration system. Such reform respects the rights of all workers and reduces workers’ vulnerability and exploitability; in particular, giving foreign-born workers rights and remedies in the workplace will minimize incidents of human trafficking and allow law enforcement to better prioritize its enforcement activities on these situations.
- **We oppose the CLEAR Act (H.R. 2671) and the Homeland Security Enhancement Act (S. 1906).** These bills, if enacted, would essentially deputize state and local police to enforce federal civil immigration laws. They would unnecessarily endanger trafficking survivors who will be deterred from seeking help from the authorities for fear of the deportation or detention consequences. They will further intimidate immigrant communities and trafficked persons from coming forward with information and pursuing their rights under the VTVPA, at a time when there is a concerted push by the federal authorities for local law enforcement to be more responsive and sensitive to human trafficking cases.
- **We oppose the Undocumented Alien Emergency Medical Assistance Amendments Of 2004 (H.R. 3722).** This bill would force hospitals to obtain and report private information, including immigration status, about undocumented individuals as a precondition for reimbursement by the federal government for the services they provide. The bill’s various provisions, including the deportation of women in active labor when this would not damage the fetus, would only discourage immigrants from seeking emergency medical care. If enacted, this bill will deny necessary medical attention to trafficking survivors, who already face numerous obstacles in accessing health care.