

## **USCIS-2011-0010 I-914, I-914A, I-914B, & I-765 Comment**

July 1, 2024

I am an attorney and have practiced immigration law or advised on immigration law matters for over ten years, working primarily on humanitarian remedies, including VAWA, T, & U- related matters. I am also currently Chair of AILA's VAWA/U/T National Liaison Committee. I am writing in my personal capacity in response to the Paperwork Reduction Act portion of the T visa final rule, Classification for Victims of Severe Forms of Trafficking In Persons; Eligibility for "T" Nonimmigrant Status, DHS Docket No. USCIS-2011-0010, which has a comment deadline of July 1, 2024.

I have reviewed the proposed versions of Forms I-914, I-914A, I-914B, and I-765, along with their accompanying instructions, as posted in connection with the T visa final rule. I write to suggest the following changes to those documents with a goal of enhancing the quality and clarity of the information collected and also of minimizing the burden on those completing the forms. These suggestions are informed by my own experience representing survivors of trafficking and also reflect the concerns expressed to me by legal practitioners.

### **Form I-914 (8/1/24 edition)<sup>1</sup>**

- Page 1, Part 2: The Attorney State License Bar Number field does not allow numbers.
- Page 2, Part 2, Question 8: I appreciate USCIS's addition of "Another Gender Identity," which is more inclusive and representative, but suggest a minor revision of the form here due to what I believe is an inadvertent error. The form currently allows selection of "Male" or "Female" AND "Another Gender Identity" simultaneously, but the draft instructions seem to indicate only one should be selected, as only "M," "F," or "X" will appear on a nonimmigrant's documents.
- Page 3, Part 3, Questions 6 & 7: These questions are duplicative of questions 2A & 2B and are also separated by questions involving physical presence and extreme hardship. I would recommend reorganizing these questions and condensing them so there are not repetitive or partially duplicative questions, which causes confusion and unnecessarily complicates the form.
- Page 3, Part 3, Question 9: This question could be clarified by including a "N/A" option for those who have only entered the U.S. once and asking the question about the "most recent entry" only of those who have entered more than once.
- Page 3, Part 3, Question 10: Now that there is a BFD process that does require an I-765, this question would be clearer if written as follows: "I am requesting an Employment

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<sup>1</sup> The form edition date of the I-914 currently included with this docket is 8/1/24, while the accompanying instructions contain an edition date of 4/1/24.

Authorization Document (EAD) **when my I-914 is granted**” (or ...”**when I am granted T nonimmigrant status**”).

- Page 4, Part 4 [text at the top of the page requiring disclosure of all criminal history]: I recommend including a note stating that vacated crimes meeting the standards put forth in *Pickering & Azrag*—crimes that have been vacated due to a substantive, statutory, or procedural defect—do not need to be listed on Form I-914. Many trafficking survivors are forced or coerced into committing crimes as part of their victimization, and state legislatures are increasingly acknowledging forced criminality by enacting vacatur legislation to allow the vacatur of criminal acts for trafficking victims, voiding the earlier judgment. In recognition of the legal error, vacatur also leads to the destruction of the related criminal records. For instance, in California, under Cal. Penal Code § 236.14(k), government agencies are required to seal and destroy such records and there is often no recourse to obtain a copy from the court. I think it is misleading to indicate, whether explicitly or by omission, that an individual with a record validly vacated for immigration purposes due to legal defect must still disclose that criminal history—in contravention of vacatur statutes, judicial orders, and the purpose behind those statutes, which is to enhance justice and prevent legally erroneous convictions from continuing to adversely impact an individual—and recommend that USCIS reconsider revising its language here.
- Page 5, Part 4, Question 3D & 4B4: I suggest revising to “one or more individuals” (plural) as more grammatically correct and in line with common usage.
- Page 7, Part 5 “Information About Your Family Members”: I suggest including here or in the instructions that the applicant’s spouse and all children should be included on the form, regardless of whether an I-914A is being or will be filed for them, as this is commonly misunderstood by applicants.
- Page 9, Part 7, Interpreter’s Contact Information: I suggest including a note indicating where applicants can provide information about additional interpreters used. In cases involving rarer languages, multiple interpreters may be required, such as for interpretation from English to Spanish to an indigenous language and vice versa. I recommend either allocating space for an additional interpreter or providing guidance on what to include in the “Additional Information” section.

## Form I-914A (4/1/24 edition)

- Page 1, Part 3, #3: When completing the T-1’s A# here, the derivative A# field on page 2 auto-populates. I suggest correcting this form error.
- Page 10, Part 6, Interpreter’s Contact Information: I suggest including a note indicating where applicants can provide information about additional interpreters. In cases involving rarer languages, multiple interpreters may be required, such as for interpretation from English to Spanish to an indigenous language, and vice versa. I recommend either

allocating space for an additional interpreter or providing guidance on what to include in the "Additional Information" section.

- Page 11, Part 7 (Preparer's Mailing Address), #3: The field allows no space between the street number and street name.

## Form I-914 (and I-914A) Instructions (4/1/24 edition)

- General: I recommend referencing the USCIS Policy Manual for *pro se* individuals who are unlikely to be aware of existing guidance regarding T nonimmigrant status. The Policy Manual provides critical context unavailable in these instructions. Failing to reference the Policy Manual is gatekeeping critical information from *pro se* survivors and is an accessibility issue.
- General: I also suggest providing a link to OVC-funded legal service providers so that unrepresented individuals—or individuals who lose access to counsel during the pendency of their application, given long wait-times—may attempt to seek free or low-cost representation, which is more efficient and effective for both applicants and USCIS. This information could also be contained in the receipt notices issued by USCIS.
- Page 1, "What is the Purpose of This Form I-914?": I support the reference to where an applicant may find the definition of a severe form of trafficking in persons.
- Page 2, "Who May File This Form?": I suggest clarifying in the text at the top of this section that no I-914A may be filed once the T-1 no longer holds T nonimmigrant status (e.g. it expires or they have adjusted status). This issue comes up regularly and should be clearly communicated to applicants, especially individuals who may be applying for derivative family members *pro se*. Given limited capacity of non-governmental organizations, I suspect the number of individuals without access to legal representation for derivative applications will only continue to grow, making the instructions that much more important. Including such information in the form instructions is also a mechanism to help ensure that survivors have access to information regardless of whether that information was provided to them by counsel.
- Page 2, "Who May File This Form?": I suggest revising the note at the end of this section as follows, for clarity: "NOTE: Although applications for all eligible family members can be filed concurrently, to approve the application for the adult or minor child **in the present danger of retaliation category**, USCIS must have already approved the Form I-914, Supplement A for their parent."
- Page 5, Part 7, Interpreter's Contact Information, Certification, & Signature: I suggest clarifying that no signature is required where phone interpretation is used and instead, the interpreter identification number and name of the interpretation company should be included, where applicable. Phone interpretation is often required in areas where there is no in-person interpretation available. Requiring in-person interpretation would be cost-prohibitive, is a language access issue, and creates additional barriers for survivors. I

have seen questions arise about how to complete these fields in such situations and therefore recommend clarification of the instructions.

- Page 7, Number 10: There is a typo at the end of this sentence (“11.”).
- Page 9, “Initial Evidence”: The language in the section relating to applying for family members after the principal applicant has submitted their filing is unclear, specifically the requirement at subsection (A), requiring any Form I-914A submitted subsequent to the principal applicant’s initial filing to be accompanied by “A. A new Form I-914, Supplement A” (emphasis added). I suggest revising this section to clarify the meaning behind this statement.
- Page 10, “Evidence of Cooperation with Reasonable Requests from Law Enforcement”: For consistency’s sake, I suggest that USCIS consider revising the title of this section to accord with the statutory and regulatory requirement, “compliance with reasonable requests,” as opposed to “cooperation.”
- Page 10, “Evidence of Cooperation with Reasonable Requests from Law Enforcement”: I recommend that USCIS remove the following sentence “Although it is not required, you may include information about why you did not provide or attempt to obtain a Supplement B.” There is no longer a requirement to demonstrate, as in the pre-2016 version of the regulations, the applicant’s “good faith attempts” to obtain an I-914B. *Compare* 8 CFR § 214.11(f)(3) (2009) *with* §§ 214.11(b)(3) & (d)(3) (2016). The final rule similarly does not require such a showing. Inclusion of the above-referenced sentence is unnecessary and confusing for both applicants and their representatives. Instead, it would be helpful to reference what the actual requirement is, namely an explanation about compliance with reasonable requests from law enforcement in the applicant’s personal statement, as per 8 CFR §§ 214.204(c)(1)(iv), and any credible evidence of cooperation, including an optional I-914B, as per 8 CFR §§ 214.204(e) & (f). It does not make sense to include in this section a reference to information that is not required while failing to mention with specificity what is required, and nowhere in this section on law enforcement cooperation is USCIS explicit that the applicant’s statement needs to discuss their compliance with reasonable requests from law enforcement.
- Page 11, “Personal Statement,” Number 1: “The events surrounding the trafficking” should be a separate bullet item, for clarity and in accordance with the final rule language.
- Page 11, “Personal Statement,” Number 5: I suggest removing “Any credible evidence that you would like USCIS to consider” from this section as its reference in the regulations refers to evidence other than the applicant’s personal statement. See 8 CFR §§ 214.204(c)(1) & (c)(2). This could be included in the earlier section on pages 9-10, “Evidence to Establish T Nonimmigrant Status.”
- Page 12, “Evidence to Establish Derivative T Nonimmigrant Status”: I suggest clarifying in this section, as well, that no I-914A may be filed and no I-914A beneficiary may be

admitted into the U.S. in T nonimmigrant status once the principal has adjusted status, as this is critical information for a T-1 to be aware of.

- Page 12, “Evidence to Establish Derivative T Nonimmigrant Status”: The text beginning with “If you are a principal applicant over 21 years of age, you may apply for your child...” does not make sense to precede the numbered list that follows that paragraph and I therefore suggest reordering the text in this section. There is also an extra space at the beginning of the quoted sentence.
- Page 12, “Evidence to Establish Derivative T Nonimmigrant Status”: For clarity, I suggest using language similar to the Policy Manual regarding age-out protections, specifically referencing the time of filing as opposed to simply stating “at the time of the principal application.” Similarly, I think it would be most helpful for the instructions to refer to all the applicable age-out protections as laid out in the regulations and Policy Manual rather than just some of them.
- Page 13, “Required Evidence”: First, a personal statement is required evidence as per 8 CFR § 214.204(c)(1) and should be included in this section. Additionally, I would suggest moving this section earlier or combining it with the earlier section on page 9, “Evidence to Establish T Nonimmigrant Status.”
- Page 15, “Bona Fide Determination Process”: I suggest that the note in this section specify, or at least reference, the BFD process for individuals with I-914/I-914A applications pending prior to the effective date, as how these applications will be handled has been the source of many questions since the publication of the final rule.
- Page 15, “Bona Fide Determination Process”: I suggest USCIS consider including in the section on employment authorization the (c)(40) BFD EAD category.
- Page 15, “Travel While Your Form I-914 Is Pending”: This statement, “departing from the United States while your application is pending could impact your ability to return to the United States unless you or your family member have another status which permits travel” is misleading. While it may be technically correct, as it fails to indicate that a principal applicant who departs the U.S. after their trafficking will not be able to establish their physical presence unless they meet one of the exceptions under § 214.11(g)(2) (interim final rule) or § 214.207(b) (final rule). I suggest something to the effect of: “Filing of an application for T nonimmigrant status does not grant you permission to travel outside the United States. Departing from the United States while your application is pending could impact your ability to establish eligibility for T nonimmigrant status. Additionally, departing from the United States while your application is pending could impact your ability to return to the United States unless you or your family member have another status which permits travel. **Even if you, as a T-1 applicant, have another status that permits reentry into the U.S., you may be unable to establish your physical presence on account of trafficking as required by 8 CFR § 214.207 if you depart the U.S. after your trafficking has ended.**” This is critical information for T-1 applicants to be advised of

especially if the instructions contain information about travel during the pendency of an I-914

- Page 16, “Confidentiality”: I suggest including the permissible disclosure described at § 214.216(b), as I understand that such disclosure may be occurring with more frequency and is taking attorneys and their clients by surprise.

## Form I-914B (4/1/24 edition)

- Page 1, Part 2, Question 5: The “number” field does not allow a numerical entry.
- Page 2, Part 2, Question 7: The “fax number” field is missing.
- Page 2, Part 2, Question 11: I suggest revising to “Case Number (if available).” This brief addition clearly indicates that a case number is not required for an LEA to sign an I-914B. As USCIS is likely well aware, instructions are not always read or fully digested, so simple changes like this can be helpful.
- Page 2, Part 3, Question 1: There are two “other” fields and it is not clear why there would be more than one.
- Page 2, Part 3, Question 3: I suggest revising the following to: “Has the applicant expressed any fear of retaliation or revenge if they had to depart from or were removed from the United States?” Many survivors do not specifically express fears relating to “removal” per se, but rather, express fear of return or harm in home country generally, which is relevant to the analysis.
- Page 3, Part 3, Question 4: Often, the dates of the criminal activity are a range rather than specific dates. I suggest revising this section so specific dates or a range of dates can be included. Making the certifier’s task of completing this form easier generally encourages its completion, which is helpful for both USCIS and applicants.
- Page 3, Part 3, Question 6: I suggest the following: “Provide the date on which the investigation or prosecution was initiated, if applicable.” Sometimes an LEA will sign an I-914B even where a formal investigation has not been opened. Again, making the certifier’s task of completing this form easier generally encourages its completion, which is helpful for both USCIS and applicants.
- Page 3, Part 3, Question 7: I suggest the following: “Provide the date on which the investigation or prosecution was completed, if applicable.” An LEA may sign this form prior to the conclusion of the investigation or prosecution.
- Page 3, Part 4, Question 1D: I suggest revising this because the age of majority is relevant to when the trafficking took place, *not* the age at the time of LE involvement. 3 USCIS-PM B.2.D.5. I suggest the following language here: “Was under the age of 18 at the time of the trafficking victimization.” The age of minority *at the time of the trafficking victimization* is the relevant consideration here and the option as is does not reflect that. 3 USCIS-PM B.2.D.5; 8 CFR § 214.208(e)(2).

- Page 4, Part 6, Question 2: There is not always both a certifying official and a supervisor of the certifying official available to sign this form. For example, a unit chief could be both the investigating officer and the certifying official, or a judge may sign the form as the certifying official with the ability to detect trafficking. I suggest clarifying in the form and instructions how to handle in these situations to reduce barriers and encourage the form's use.

## Form I-914B Instructions (4/1/24 edition)

- Page 1, What is the Purpose of Form I-914 Supplement B?: Since an LEA may sign I-914B even if it has not opened an investigation (and therefore there has been no reasonable request for assistance), I suggest amending this sentence to something along the lines of: “You, as a Federal, State, Tribal, or local law enforcement official use Form I-914, Supplement B, Declaration for Trafficking Victim, to provide evidence to United States Citizenship and Immigration Services (USCIS) that you believe an individual (the applicant) submitting Form I-914, Application for T Nonimmigrant Status, is a victim of a severe form of trafficking in persons and has cooperated with **any** reasonable requests for assistance in an investigation or prosecution **(if opened or initiated)** of a crime where trafficking is at least one central reason for the commission of that crime.” Clarifying as early as possible on this form that no investigation or prosecution is required in order to sign the form is important to avoid instances where busy LEAs stop reading upon reaching “your reasonable requests for assistance in an investigation or prosecution of a crime. . . .”
- Page 1, What is the Purpose of Form I-914 Supplement B?: I suggest citing, as early as possible in the instructions, to the regulations or policy manual language that provides examples of what agencies may be I-914B certifying agencies, as well as to DHS's T Visa Law Enforcement Resource Guide, so that potential certifiers do not have to go digging to ascertain if they are able to sign an I-914B. USCIS could consider creating a section after this first one entitled “Who Can Sign This Form?” so this information is readily accessible to potential certifiers rather than burying it in the “Specific Instructions” section. Prominently including information on potential certifying agencies could be useful in mitigating reticence among some agencies regarding signing I-914Bs.
- Page 1, When Should I Use Form I-914, Supplement B?: Same comment as above to replace “your reasonable requests for assistance . . .” with “and has cooperated with **any** reasonable requests for assistance in an investigation or prosecution **(if opened or initiated)** of a crime where trafficking . . . .”
- Page 1, When Should I Use Form I-914, Supplement B?: For clarity's sake, I suggest revising the existing language as follows: “You do not need to formally launch an investigation or file charges to complete Form I-914, Supplement B. You may complete Supplement B if an investigation does not lead to an arrest or a prosecution. **Additionally,**



you may complete Supplement B even if a victim decides to stop cooperating in an investigation or prosecution because they fall under the age-based exemption or trauma-based exception at 8 CFR § 214.11(b)(3). Completing Supplement B is not contingent on the outcome of a prosecution or investigation. Completing Supplement B is at your discretion. There is no statute of limitations related to completing Supplement B.”

- Page 3, Part 3, 1B: I recommend clarifying the language here as follows, or to something similar: “Sex trafficking where the victim **was** under 18 years of age **at the time of the trafficking criminal activity**.” [Preamble to 2016 Interim Regulations at 92273](#). As written, it isn’t clear that the reference to the age of minority here applies at the time of the trafficking as opposed to some other time, and many potential certifying agencies may be unfamiliar with the statute and regulations.
- Page 3, Part 4, Cooperation of the Victim: I recommend clarifying that the age of minority applies *at the time of the trafficking* (not the time of interaction with LEA, application to USCIS, etc.). 3 USCIS-PM B.2.D.5; 8 CFR § 214.208(e)(2). As currently written, how the age-based cooperation exemption works is unclear and could lead to LEA refusal to certify. I suggest revising to something along the lines of “. . . under 18 years of age **at the time of the trafficking criminal activity**.”
- Page 4, Part 6, Attestation: I suggest that USCIS consider clarifying that in some instances, the investigating officer and the certifying supervisor may be the same individual.
- Page 4, How Can I Provide Information at a Later Date?: I suggest revising the order of this paragraph so that it flows more logically. In doing that reordering, I also suggest removing “[s]end any written statement to USCIS at.” Suggested revised text is as follows: “An agency can provide further information to USCIS or formally withdraw or disavow Form I-914, Supplement B, at a later date, even after this form is submitted to USCIS, if there is new information or if the victim is no longer cooperating with a reasonable request for assistance in an investigation or prosecution. **To do so, an agency** should send a letter on official agency letterhead to USCIS at the address **below** describing the reasons for providing further information or the reasons for withdrawing or disavowing the declaration. Include the victim’s name, date of birth, and A-Number (if available) on all correspondence. USCIS will allow the victim to rebut this information. [VSC address]”

## Form I-765 (edition date 8/28/24)

- Page 2, Part 2, Number 9: Similar to the I-914, I-914A, and I-914B, I recommend that USCIS include an “another gender identity” option for inclusivity and consistency reasons.



## Form I-765 Instructions (8/28/2024 edition)

- Page 14, “Bona Fide Determination Process for T Nonimmigrant Status Principal Applicants”: I recommend including in this section, *if true*, that USCIS will not accept I-765 applications filed for I-914/I-914A applicants pending *prior to* the effective date of the final rule unless it conducts a BFD review after issuing an RFE in the case and issues the applicant a notice of eligibility indicating they may file an I-765. Clarity regarding how USCIS will handle BFDs for cases filed prior to the effective date of the final rule will likely reduce submission of filings that USCIS will reject and helps legal representatives manage client expectations and provide clear information on processes.

I appreciate the opportunity to comment on these proposed form changes. Thank you for your consideration.