



U.S. Department of Justice  
Drug Enforcement Administration  
FOIA/Records Management Section  
Freedom of Information Operations Unit

www.dea.gov

AUG 18 2008

Case Number: 08-1190-F

Subject of Request: ISSUANCE AND DISTRIBUTION OF S-5 AND S-6 VISAS

Tegan Millspaw  
Judicial Watch  
500 School Street, S.W., Suite 500  
Washington, D.C. 20024

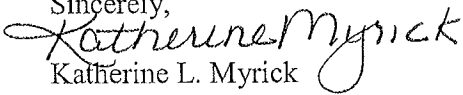
Dear Tegan Millspaw:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request dated August 4, 2008, regarding S-5 and S-6 Visas. Your request has been assigned Case Number 08-1190-F. Please refer to this case number when corresponding with this office regarding this request. In response to your request, enclosed please find Drug Enforcement Administration (DEA) Agents Manual Section 6516L as responsive to your request for "records establishing the legal or policy basis for alien eligibility for S-5 and/or S-6 Visas."

With regard to the other items of your request, DEA is unable to provide records. The issuance of visas is not the responsibility of DEA. Thus, DEA does not maintain "[r]ecords detailing the distribution or allocation of S-5 and S-6 visas", "[r]ecords detailing the basis for establishing the number of S-5 and S-6 visas distributed per year" or "[s]tatistical records documenting the issuance/use of S-5 and S-6 visas."

If you wish to appeal this response, you may do so within sixty (60) days from the date of this letter pursuant to 28 C.F.R. 16.9. The appeal should be sent to the following address, with the envelope marked "FOIPA Appeal":

U.S. DEPARTMENT OF JUSTICE  
OFFICE OF INFORMATION AND PRIVACY  
NYAV BUILDING, 11<sup>TH</sup> FLOOR  
WASHINGTON, D.C. 20530

Sincerely,  
  
Katherine L. Myrick  
Chief, Operations Unit  
FOI/Records Management Section

Enclosure

L. Section 13003 of the Violent Crime Control and Law Enforcement Act of 1994 created a new non-immigrant classification ("S Classification or S Visa") providing for the admission of alien witnesses and "informants" (Confidential Sources) who may obtain permanent resident status upon completion of the conditions specified for their entry into the U.S. This statute is implemented and regulated by the INS and DOS. Only 100 visas are statutorily authorized for each fiscal year for issuance to witnesses and informants (Confidential Sources) sponsored by all Federal and state agencies. Confidential Sources who enter the U.S. under this classification may also be candidates for entry into the USMS Witness Protection Program. Similar threat assessment analysis is used to determine eligibility for both programs. The "S" Visa program provides benefit to alien witness/Confidential Sources who were previously unavailable by allowing the alien to earn lawful permanent resident status for himself and his family members through cooperation and good behavior while in the U.S. The family members that receive "S" Visa/classification do not count against the annual ceiling of 100 "S" Visa authorizations. Requests for further information on the criteria for entry into this program or to initiate the application process must be directed to DOL. All such travel must also be coordinated with the SAC or CA at the point of destination.



U.S. Immigration  
and Customs  
Enforcement

September 30, 2008

Tegan Millspaw  
Judicial Watch  
501 School Street, SW, Suite 500  
Washington, DC 20024

Re: **2008FOIA3600**

Dear Mr. Millspaw:

This letter is the final response to your August 4, 2008, Freedom of Information Act (FOIA) request addressed to the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE). You requested records detailing the distribution or allocation of S-5 and S-6 visas; records establishing the legal and/or policy basis for alien eligibility for S-5 and/or S-6 visas; records detailing the basis for establishing the number of S-5 and S-6 visas distributed per year; and statistical records documenting the issuance/use of S-5 and S-6 visas. Your request was received in this office on August 4, 2008.

A search of the ICE Student Exchange Visitors Program (SEVP) Office of Detention and Removal Operations (DRO), and the Office of Investigations (OI) for documents responsive to your request produced a total of thirty - three pages. Upon a review of your request, I have determined that twenty - two pages are releasable in their entirety. Eleven pages are withheld in their entirety pursuant to Exemptions (b)(2) high and (b)(5) of the Freedom of Information Act, 5 U.S.C. § 552.

Enclosed are twenty - two pages releasable in their entirety.

Eleven pages are withheld in their entirety as described below.

**FOIA Exemption 2(high)** protects information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manual of procedures of examiners or adjudicators, to the extent that disclosure would risk circumvention of an agency regulation or statute, impede the effectiveness of an agency's activities, or reveal sensitive information that may put the security and safety of an agency activity or employee at risk. Whether there is any public interest in disclosure is legally irrelevant. Rather, the concern under high 2 is that a FOIA disclosure should not benefit those attempting to violate the law and avoid detection.

**FOIA Exemption 5** protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that [portions of] the responsive documents qualify for protection under the deliberative process privilege.

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

Your request is also being referred to the U.S. Citizenship and Immigration Services and the U.S. State Department for direct action and response to you. You may contact the USCIS by writing to the U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, Attn: Jill Eggleston, P.O. Box 648010, Lee's Summit, MO 64064-8010 or by telephone at (816) 350-5570. You may contact the U.S. State Department by writing to the Department of State, Office of IRM Programs and Services, attn: Margaret P. Grafeld, SA-2, 5<sup>th</sup> Floor, Washington, DC 20522 - 6001 or by telephone at (202) 261-8484.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

If you need to contact our office concerning this request, please call (202) 732-0300 and refer to **2008FOIA3600**.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer

Enclosure(s): 22 pages



U.S. Department of Justice  
Immigration and Naturalization Service

HQOPS 50/18-P

Office of the Executive Associate Commissioner

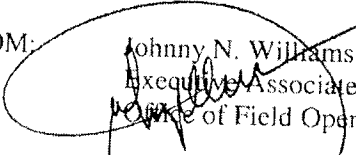
425 I Street NW  
Washington, DC 20536

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MEMORANDUM FOR REGIONAL DIRECTORS

CHIEF,  
U.S. BORDER PATROL

ACTING DIRECTOR  
OFFICE OF INTERNATIONAL AFFAIRS

FROM:  Johnny N. Williams  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Guidance Governing the S Nonimmigrant Visa

The purpose of this memorandum is to provide guidance on the processing and handling of aliens who have applied for the S nonimmigrant visa via the sponsorship of the Immigration and Naturalization Service (INS) or other law enforcement agency.

Provisions and Conditions of the S Nonimmigrant Visa

As part of the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill, Public Law No. 103-322), Congress established a standard procedure for allowing aliens into the United States<sup>1</sup> who are needed to provide testimony or information to law enforcement agencies<sup>2</sup>

<sup>1</sup> In practice, the provision is commonly used to provide a lawful status to eligible aliens who are already in the United States.

<sup>2</sup> The term law enforcement agencies (LEAs) include U.S. Attorney's Offices and Federal and State courts, as well as Federal and State investigative agencies.

(LEAs). The Crime Bill established section 101(a)(15)(S) of the Immigration and Nationality Act (INA), which authorizes the admission of a limited number of alien witnesses and informants under specified conditions. The provisions also authorize adjustment of status to permanent residence after the satisfaction of certain conditions.

Under the regulations (8 CFR § 214.2(t) – copy of regulation attached) an alien may be classified as an S-5 alien witness or informant under the provisions of INA § 101(a)(15)(S)(i), in the exercise of discretion pursuant to an application on Form I-854 *Inter-Agency Alien Witness and Informant Record* (copy attached) by an interested LEA, if it is determined by the Commissioner that the alien: (i) possesses critical reliable information concerning a criminal organization; (ii) is willing to supply or has supplied such information to a Federal or State LEA; and (iii) is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise. An alien may be classified as an S-6 alien counterterrorism witness or informant under the provisions of INA § 101(a)(15)(S)(ii) if it is determined by the Secretary of State and the Commissioner acting jointly, in the exercise of their discretion, pursuant to an application on Form I-854 by an interested Federal or State LEA, that the alien: (i) possesses critical reliable information concerning a terrorist organization, enterprise, or operation; (ii) is willing to supply or has supplied such information to a Federal LEA; (iii) is in danger or has been placed in danger as a result of providing such information; and (iv) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. § 2708(a).

An alien spouse, married or unmarried son or daughter, or parent of an alien witness or informant may be granted derivative S classification when accompanying, or following to join, the alien witness or informant if, in the exercise of discretion by the Commissioner or the Secretary of State and the Commissioner acting jointly, consider it to be appropriate.

The Crime Bill gives the Attorney General the discretion to waive most exclusion grounds<sup>3</sup> for an alien eligible for S status if the Attorney General determines that it is in the national interest to do so.

According to INA § 214(k)(1) the number of aliens who may be provided a visa as nonimmigrant under INA § 101(a)(15)(S)(i) in any fiscal year may not exceed 200. The number of aliens who may be provided a visa as nonimmigrants under INA § 101(a)(15)(S)(ii) in any fiscal year may not exceed 50. The period of admission of an alien as such a nonimmigrant may not exceed 3 years. Such period may not be extended by the Attorney General. According to INA § 214(k)(4), as a condition for the admission, and continued stay in lawful status, of such a nonimmigrant, the nonimmigrant – (A) shall report not less often than quarterly to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require; (B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after date of such admission; (C) must have executed a form that waives the nonimmigrant's right to contest, other

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<sup>3</sup>The Nazi and genocide exclusion grounds may not be waived.

than on the basis of an application for withholding of deportation, any action for removal of the alien instituted before the alien obtains lawful permanent resident status; and (D) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

#### Application Process for the S Nonimmigrant Visa

An application for an S nonimmigrant visa may only be submitted by an LEA directly in need of the information to be provided by the alien witness or informant. The Form I-854 must be filed directly with the Assistant Attorney General for the Criminal Division of the Department of Justice when the LEA is not the INS. When the INS is the sponsoring agency, the Form I-854, with all attachments and alien A-file, is to be forwarded directly from the district/sector office to the Headquarters Office of Investigations (HQINV), via Federal Express. The package must contain a memorandum addressed to the Assistant Commissioner for Investigations from the District Director or Chief Patrol Agent that explains why the alien should be granted S nonimmigrant status. The Form I-854 and its attachments will be reviewed by HQINV, and HQINV will determine if the alien meets the requirements of the S nonimmigrant provision. Once that process is complete, HQINV will forward the application to the Assistant Attorney General for the Criminal Division with its recommendation. The Criminal Division then forwards properly certified applications that fall within the numerical limitation to the INS Commissioner for approval.

The requesting LEA must certify its needs for the alien witness or informant by providing evidence establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the United States, any conduct or condition that may constitute a ground of excludability, and any factors warranting a favorable exercise of discretionary waiver authority by the Attorney General. (The Criminal Division has created a worksheet that is to be completed by the sponsoring agency. This worksheet addresses each of the above elements. This worksheet is attached and an electronic version can be requested from HQINV).

The Form I-854 must be signed by the United States Attorney with jurisdiction over a prosecution or investigation that forms the basis for a request for S nonimmigrant classification. The United States Attorney must agree that no promise may be, has been, or will be made that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to lawful permanent resident, or attempt to remain beyond the authorized period of admission.

Under the regulations, the Criminal Division reviews each application for completeness and considers the negative and favorable factors warranting an exercise of discretion on the alien's behalf. No request for S nonimmigrant classification may go to the INS without the Criminal Division's certification. The INS Commissioner will make the final decision to approve or deny a request for S nonimmigrant classification. If the INS approves the application, admission as a nonimmigrant will be authorized for a period not to exceed three years. The regulation specifies that S nonimmigrants may work in the United States.

Upon approval of the S nonimmigrant visa, it will be the responsibility of the controlling INS agent, who submitted the application, to provide quarterly reports to HQINV. The HQINV will then forward the reports to the Attorney General.

**The S status itself does not authorize the alien to travel abroad.** If a situation arises that requires the alien to travel abroad, a request for advance parole must be made directly to HQINV, who will then forward the request to the Headquarters Parole Office.

#### Requests for Employment Authorization

Several LEAs have called HQINV regarding problems obtaining employment authorization documents (EADs) for their informants at the local INS offices because: 1) HQINV has possession of the alien's A-file; and 2) there is no provision under 8 CFR § 274a.12 to grant employment authorization to an alien who has a pending S nonimmigrant visa. Pursuant to 8 CFR § 274a.12(c)(21) an EAD card can be issued to a principal alien and qualified dependent family members once the S nonimmigrant visa has been approved.

Due to the length of time it is taking to process an S nonimmigrant visa application from its arrival at the Criminal Division through the final approval of the INS Commissioner, and since an alien with a pending S nonimmigrant visa **cannot** be physically removed from the United States, the Assistant Commissioner for Investigations at HQINV will place these aliens in deferred action until a decision is made regarding the pending S nonimmigrant visa (**Action will be deferred by the Assistant Commissioner for Investigations only on nondetained aliens**). Aliens under deferred action are eligible for an EAD card pursuant to 8 CFR § 274a.12(c)(14).

PROCEDURE: District offices will continue processing EAD requests under current procedures **except for aliens who have an S nonimmigrant visa application pending at the Criminal Division or at HQINV**. For those cases, the sponsoring LEA will forward the Form I-765, *Application for Employment Authorization*, with fee and photographs, to his/her respective Headquarters Point-of-Contact (POC). The LEA POC will forward the Form I-765, with fee and photographs, directly to HQINV. Once HQINV approves the Form I-765, the EAD card will be messenger mailed to the LEA's POC.

#### Requests by LEAs for Parole

Based on the authorities provided under 8 CFR § 212.14(a), parole can be granted under INA § 212(d)(5) for aliens whom LEAs seek to bring to the United States as witnesses or informants who are applying for S classification. All such requests are to be submitted by the headquarters office of the LEA directly to HQINV, who will then forward the request to the INS Headquarters Parole Office after review and concurrence.

All requests for advance parole for aliens who have an S nonimmigrant visa application pending at the Criminal Division or at HQINV are to be submitted by the headquarters office of the LEA directly to HQINV with a letter detailing the purpose for the advance parole request. Approval of these requests are limited to "urgent humanitarian reasons or for operational purposes identified by the LEA (significant public interest)." The HQINV will then forward the request to the INS headquarters Parole office after review and concurrence.

#### Detained Aliens

If the alien is in custody and is being processed for removal, all attempts to obtain a final order of removal should be made. However, the removal is deferred until such time as a decision is rendered on the application. It is critical that contact with HQINV be maintained during this process. **No alien will be removed from the United States while an S nonimmigrant visa is pending at the Criminal Division or at HQINV.**

#### Adjustment of Status to Lawful Permanent Resident

If the Attorney General determines that an S nonimmigrant alien supplied the required information and that the information contributed to the success of an investigation or prosecution of a criminal enterprise, the alien may adjust status to permanent residence (INA § 245(j); 8 U.S.C. § 1255; 8 CFR § 245.11). The application for adjustment of status process is similar to the initial S nonimmigrant visa application process. The LEA that made the original request must initiate the request by filing another Form I-854 with the Criminal Division (INS cases are to be forwarded directly to HQINV). The Criminal Division reviews the information to determine whether to certify the request to the INS Commissioner. The INS Commissioner makes the final decision whether to allow the alien to apply for adjustment of status. If the Commissioner decides to permit the alien to apply for adjustment of status, the alien then submits the Form I-485 *Application to Register Permanent Residence or Adjust Status*, with the appropriate fee and supporting documentation. **Due to the sensitive nature of these applications and because this program is controlled by HQINV, the I-485s will be filed at HQINV.** District Adjudication Officers, from INS district offices, will be detailed to HQINV in order to adjudicate these cases or these cases can be adjudicated at the Washington or Baltimore District Offices. **NOTE: These applications must be received at HQINV prior to expiration of the applicant's S nonimmigrant status.** If the S nonimmigrant status expires before the I-854 and I-485 have been received, the sponsoring agency must reapply for a new S nonimmigrant visa in order to place the applicant back in S nonimmigrant status. **It is recommended that requests for adjustment of status be submitted two years after the alien has been granted S nonimmigrant status.**

After the alien adjusts status to lawful permanent resident, the INS may start removal proceedings if the alien engages in removable conduct after adjusting status, or if the INS discovers that the alien failed to disclose an excludable offense committed before adjusting status to that of a permanent resident [INA § 212(d)(1); 8 U.S.C. § 1182(d)(1); 8 CFR § 212.4(i)(2)].

Memorandum for Regional Directors, et al.  
Subject: Guidelines Governing the S Nonimmigrant Visa

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Please direct any questions regarding these guidelines to Senior Special Agent Michael Greenfield (202) 353-0786 or Supervisory Special Agent Lydia St. John-Mellado, Director, Fraud Unit (202) 514-5097. The INS S nonimmigrant visa applications are to be Federal Expressed to: 425 I St., NW, Room 1000, Washington, D.C. 20536 ATTENTION: Senior Special Agent Michael Greenfield.

Attachments (3)

**Service Law Books**

**Sec. 214.2(t) Alien witnesses and informants--**

(1) Alien witness or informant in criminal matter. An alien may be classified as an S-5 alien witness or informant under the provisions of section 101(a)(15)(S)(i) of the Act if, in the exercise of discretion pursuant to an application on Form I-854 by an interested federal or state law enforcement authority ("LEA"), it is determined by the Commissioner that the alien: (Paragraph (t) added 8/25/95; 60 FR 44260)

- (i) Possesses critical reliable information concerning a criminal organization or enterprise;
- (ii) Is willing to supply, or has supplied, such information to federal or state LEA; and
- (iii) Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

(2) Alien witness or informant in counterterrorism matter. An alien may be classified as an S-6 alien counterterrorism witness or informant under the provisions of section 101(a)(15)(S)(ii) of the Act if it is determined by the Secretary of State and the Commissioner acting jointly, in the exercise of their discretion, pursuant to an application on Form I-854 by an interested federal LEA, that the alien:

- (i) Possesses critical reliable information concerning a terrorist organization, enterprise, or operation;
- (ii) Is willing to supply or has supplied such information to a federal LEA;
- (iii) Is in danger or has been placed in danger as a result of providing such information; and
- (iv) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a).

(3) Spouse, married and unmarried sons and daughters, and parents of alien witness or informant in criminal or counterterrorism matter. An alien spouse, married or unmarried son or daughter, or parent of an alien witness or informant may be granted derivative S classification (S-7) when accompanying, or following to join, the alien witness or informant if, in the exercise of discretion by, with respect to paragraph (t)(1) of this section, the Commissioner, or, with respect to paragraph (t)(2) of this section, the Secretary of State and the Commissioner acting jointly, consider it to be appropriate. A nonimmigrant in such derivative S-7 classification shall be subject to the same period of admission, limitations, and restrictions as the alien witness or informant and must be identified by the requesting LEA on the application Form I-854 in order to qualify for S

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### **Service Law Books**

nonimmigrant classification. Family members not identified on the Form I-854 application will not be eligible for S nonimmigrant classification.

(4) Request for S nonimmigrant classification. An application on Form I-854, requesting S nonimmigrant classification for a witness or informant, may only be filed by a federal or state LEA (which shall include a federal or state court or a United States Attorney's Office) directly in need of the information to be provided by the alien witness or informant. The completed application is filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward only properly certified applications that fall within the numerical limitation to the Commissioner, Immigration and Naturalization Service, for approval, pursuant to the following process.

(i) Filing request. For an alien to qualify for status as an S nonimmigrant, S nonimmigrant classification must be requested by an LEA. The LEA shall recommend an alien for S nonimmigrant classification by: Completing Form I-854, with all necessary endorsements and attachments, in accordance with the instructions on, or attached to, that form, and agreeing, as a condition of status, that no promises may be, have been, or will be made by the LEA that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to that of lawful permanent resident, or otherwise attempt to remain beyond a 3-year period other than by the means authorized by section 101(a)(15)(S) of the Act. The alien, including any derivative beneficiary who is 18 years or older, shall sign a statement, that is part of or affixed to Form I-854, acknowledging awareness that he or she is restricted by the terms of S nonimmigrant classification to the specific terms of section 101(a)(15)(S) of the Act as the exclusive means by which he or she may remain permanently in the United States.

(A) District director referral. Any district director or Service officer who receives a request by an alien, an eligible LEA, or other entity seeking S nonimmigrant classification shall advise the requestor of the process and the requirements for applying for S nonimmigrant classification. Eligible LEAs seeking S nonimmigrant classification shall be referred to the Commissioner.

(B) United States Attorney certification. The United States Attorney with jurisdiction over a prosecution or investigation that forms the basis for a request for S nonimmigrant classification must certify and endorse the application on Form I-854 and agree

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### **Service Law Books**

that no promises may be, have been, or will be made that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to lawful permanent resident, or attempt to remain beyond the authorized period of admission.

(C) LEA certification. LEA certifications on Form I-854 must be made at the seat-of-government level, if federal, or the highest level of the state LEA involved in the matter. With respect to the alien for whom S nonimmigrant classification is sought, the LEA shall provide evidence in the form of attachments establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the United States, all conduct or conditions which may constitute a ground or grounds of excludability, and all factors and considerations warranting a favorable exercise of discretionary waiver authority by the Attorney General on the alien's behalf. The attachments submitted with a request for S nonimmigrant classification may be in the form of affidavits, statements, memoranda, or similar documentation. The LEA shall review Form I-854 for accuracy and ensure the alien understands the certifications made on Form I-854. (Corrected 10/5/95; 60 FR 52248)

(D) Filing procedure. Upon completion of Form I-854, the LEA shall forward the form and all required attachments to the Assistant Attorney General, Criminal Division, United States Department of Justice, at the address listed on the form.

#### (ii) Assistant Attorney General, Criminal Division review.--

(A) Review of information. Upon receipt of a complete application for S nonimmigrant classification on Form I-854, with all required attachments, the Assistant Attorney General, Criminal Division, shall ensure that all information relating to the basis of the application, the need for the witness or informant, and grounds of excludability under section 212 of the Act has been provided to the Service on Form I-854, and shall

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consider the negative and favorable factors warranting an exercise of discretion on the alien's behalf. No application may be acted on by the Assistant Attorney General unless the eligible LEA making the request has proceeded in accordance with the instructions on, or attached to, Form I-854 and agreed to all provisions therein.

(B) Advisory panel. Where necessary according to procedures established by the Assistant Attorney General, Criminal Division, an advisory panel, composed of representatives of the Service, Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Criminal Division, and the Department of State, and those representatives of other LEAs, including state and federal courts designated by the Attorney General, will review the completed application and submit a recommendation to the Assistant Attorney General, Criminal Division, regarding requests for S nonimmigrant classification. The function of this advisory panel is to prioritize cases in light of the numerical limitation in order to determine which cases will be forwarded to the Commissioner.

(C) Assistant Attorney General certification. The certification of the Assistant Attorney General, Criminal Division, to the Commissioner recommending approval of the application for S nonimmigrant classification shall contain the following:

- (1) All information and attachments that may constitute, or relate to, a ground or grounds of excludability under section 212(a) of the Act;
- (2) Each section of law under which the alien appears to be inadmissible;
- (3) The reasons that waiver(s) of inadmissibility are considered to be justifiable and in the national interest;
- (4) A detailed statement that the alien is eligible for S nonimmigrant classification, explaining the nature of the alien's cooperation with the government and the government's need for the

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alien's presence in the United States;

(5) The intended date of arrival;

(6) The length of the proposed stay in the United States;

(7) The purpose of the proposed stay; and

(8) A statement that the application falls within the statutorily specified numerical limitation.

(D) Submission of certified requests for S nonimmigrant classification to Service.

(1) The Assistant Attorney General, Criminal Division, shall forward to the Commissioner only qualified applications for S-5 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph and that fall within the annual numerical limitation.

(2) The Assistant Attorney General Criminal Division, shall forward to the Commissioner applications for S-6 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph, certified by the Secretary of State or eligibility for S-6 classification, and that fall within the annual numerical limitation.

(5) Decision on application.

(i) The Attorney General's authority to waive grounds of excludability pursuant to section 212 of the Act is delegated to the Commissioner and shall be exercised with regard to S nonimmigrant classification only upon the certification of the Assistant Attorney General, Criminal Division. Such certification is nonreviewable as to the matter's significance, importance, and/or worthwhileness to law enforcement. The Commissioner shall make the final decision to approve or deny a request for S nonimmigrant classification certified by the Assistant Attorney General, Criminal Division.

(ii) Decision to approve application. Upon approval of the

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### **Service Law Books**

application on Form I-854, the Commissioner shall notify the Assistant Attorney General, Criminal Division, the Secretary of State, and Service officers as appropriate. Admission shall be authorized for a period not to exceed 3 years.

(iii) Decision to deny application. In the event the Commissioner decides to deny an application for S nonimmigrant classification on Form I-854, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

(6) Submission of requests for S nonimmigrant visa classification to Secretary of State. No request for S nonimmigrant visa classification may be presented to the Secretary of State unless it is approved and forwarded by the Commissioner.

(7) Conditions of status. An alien witness or informant is responsible for certifying and fulfilling the terms and conditions specified on Form I-854 as a condition of status. The LEA that assumes responsibility for the S nonimmigrant must:

(i) Ensure that the alien:

(A) Reports quarterly to the LEA on his or her whereabouts and activities, and as otherwise specified on Form I-854 or pursuant to the terms of his or her S nonimmigrant classification;

(B) Notifies the LEA of any change of home or work address and phone numbers or any travel plans;

(C) Abides by the law and all specified terms, limitations, or restrictions on the visa, Form I-854, or any waivers pursuant to classification; and

(D) Cooperates with the responsible LEA in accordance with the terms of his or her

**INSERTS**

### **Service Law Books**

classification and any restrictions on Form I-854;

(ii) Provide the Assistant Attorney General, Criminal Division, with the name of the control agent on an ongoing basis and provide a quarterly report indicating the whereabouts, activities, and any other control information required on Form I-854 or by the Assistant Attorney General;

(iii) Report immediately to the Service any failure on the alien's part to:

(A) Report quarterly;

(B) Cooperate with the LEA;

(C) Comply with the terms and conditions of the specific S nonimmigrant classification; or

(D) Refrain from criminal activity that may render the alien deportable, which information shall also be forwarded to the Assistant Attorney General, Criminal Division; and

(iv) Report annually to the Assistant Attorney General, Criminal Division, on whether the alien's S nonimmigrant classification and cooperation resulted in either:

(A) A successful criminal prosecution or investigation or the failure to produce a successful resolution of the matter; or

(B) The prevention or frustration of terrorist acts or the failure to prevent such acts.

(v) Assist the alien in his or her application to the Service for employment authorization.

(8) Annual report. The Assistant Attorney General, Criminal Division, in consultation with the Commissioner, shall compile the statutorily mandated annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

(9) Admission. The responsible LEA will coordinate the admission of an alien in S nonimmigrant classification with the Commissioner as to the date, time, place, and manner of the alien's arrival.

**INSERTS**

### **Service Law Books**

(10) Employment. An alien classified under section 101(a)(15)(S) of the Act may apply for employment authorization by filing Form I-765, Application for Employment Authorization, with fee, in accordance with the instructions on, or attached to, that form pursuant to § 274a.12(c)(21) of this chapter.

(11) Failure to maintain status. An alien classified under section 101(a)(15)(S) of the Act shall abide by all the terms and conditions of his or her S nonimmigrant classification imposed by the Attorney General. If the terms and conditions of S nonimmigrant classification will not be or have not been met, or have been violated, the alien is convicted of any criminal offense punishable by a term of imprisonment of 1 year or more, is otherwise rendered deportable, or it is otherwise appropriate or in the public interest to do so, the Commissioner shall proceed to deport an alien pursuant to the terms of 8 CFR 242.26. In the event the Commissioner decides to deport an alien witness or informant in S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deport.

(12) Change of classification.

(i) An alien in S nonimmigrant classification is prohibited from changing to any other nonimmigrant classification.

(ii) An LEA may request that any alien lawfully admitted to the United States and maintaining status in accordance with the provisions of § 248.1 of this chapter, except for those aliens enumerated in 8 CFR 248.2, have his or her nonimmigrant classification changed to that of an alien classified pursuant to section 101(a)(15)(S) of the Act as set forth in 8 CFR 248.3(h).

**INSERTS**

## Inter-Agency Alien Witness and Informant Record

### INSTRUCTIONS

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#### PART I. GENERAL

**Purpose Of This Form.** This form is used by law enforcement agencies (LEA's) to bring alien witnesses and informants to the United States in a "S" nonimmigrant classification. This form provides the Department of State (DOS) and the Immigration and Naturalization Service (INS) with information necessary to identify the requesting LEA, the alien witness and/or informant, and others, e.g., the United States Attorney, needing the information or testimony of that alien. It assists DOS and INS in the exercise of their joint responsibility to adjudicate requests by LEAs for S classification.

**General Instructions.** Please read the instructions carefully. A separate form must be used for each witness/informant requested. Please answer all questions by typing or clearly printing in ink. Failure to answer all questions will delay the processing of this application and may result in its denial. Indicate a non-applicable question with "N/A." If the answer is "none," please so state. Submit this form in duplicate. If you, as the requesting agent, need extra space to answer any item, attach a sheet of paper with your name on it, as well as the name of the alien, the LEA requester and the control agent. You should make copies of this completed form for your records. Please provide exact information about the request you are making (e.g., for S classification waivers of grounds of inadmissibility or adjustment of status) and complete and attach all necessary certifications and documentation.

#### PART II. WHO IS TO USE THIS FORM

This form may be used only by a Federal or State LEA and only to request that an alien witness or informant be allowed to: (1) proceed into the United States pursuant to the S nonimmigrant classification; (2) change nonimmigrant classification to an S classification, or; (3) adjust to lawful permanent resident status from the S nonimmigrant classification. For the witness/informant, the LEA must specifically request:

**S-5 or S-6 nonimmigrant classification.** The S classification may be requested when an alien witness or informant intends to remain permanently in the United States.

An **S-5 classification may be requested** for an alien who possesses and is willing to provide to the requesting LEA critical, reliable information on a criminal organization and who otherwise qualifies under section 101(a)(15)(S) of the Immigration and Nationality (Act) and 8 CFR 214.2(t). An **S-6 classification may be requested** for an alien who possesses and is willing to provide information on a terrorist organization, who will be or is placed in danger as a result, is eligible for an award under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a), and who otherwise qualifies under section 101(a)(15)(S) of the Act and 8 CFR 214.2(t).

**Please note:** A Federal or State LEA may request S-5 nonimmigrant classification for an alien witness or informant. However, only a Federal LEA or Federal court may request S-6 classification for an alien witness or informant.

**The LEA May Also Make A Request For Derivative Beneficiaries (Part A 6).** Qualifying relatives (spouse, married and unmarried sons and daughters, and parents) of the principal alien witness and informant may be included in a request for the S nonimmigrant classification. All required information for such derivative beneficiaries of this request must be included at the time of filing the request for nonimmigrant classification. Only qualifying relatives identified at the time of filing will be considered as accompanying or following to join. Proof of family relationship, biographical data, and grounds of excludability must be attached for each named qualifying relative.

**For Change of Status To The S Classification.** An LEA may request the Service to change the classification of an alien already in the United States from another valid nonimmigrant classification to S-5 or S-6 classification (8 CFR 214.2(t)(12)) by filing this form and Form I-539, Application to Extend/ Change Nonimmigrant Status, together with the relevant documentation and requisite fees, pursuant to the instructions for filing requests for an S classification, below.

**For Requests To Allow An S Nonimmigrant To File For Adjustment Of Status To That Of Lawful Permanent Resident (8 CFR 245.11).** A request to allow a nonimmigrant in an S classification to file for adjustment of status must be filed by the LEA that originally requested the S classification and may not be filed until the alien has fulfilled the terms and conditions of his or her S classification. Please attach to the request on Part F of this form all relevant documentation establishing that the alien has fulfilled the terms and conditions of his or her S classification and related recommendations. Only the derivative beneficiaries named on the request for S classification are eligible to adjust pursuant to 8 CFR 245.11.

Please carefully complete all relevant parts of this form.

### PART III. REQUIRED DOCUMENTATION

**For The S Classification.** Requests for the S classification (8 CFR 214.2(i)) are premised on the alien witness and informant's willingness to provide critical, reliable information. You must provide clear, **VERY SPECIFIC** statements of the following:

- The operations that form the basis of the request. For example, if you need the alien to appear as a witness, please give the date and place of the trial and the nature of the testimony you expect to receive.
- The objective of the request, that is, why the admission of this alien is necessary, essential, and in the national interest. The terms and conditions pursuant to which an S classification is requested must be stated very clearly on, or attached to, this form.
- The nature of the alien's cooperation with the government, any bargains you have made with the alien, and any benefits promised in return. **NOTE THAT NO PROMISES FOR IMMIGRATION BENEFITS MAY BE MADE TO AN ALIEN SEEKING S CLASSIFICATION.**

#### For Ground(s) Of Excludability:

**Part A.** All grounds of excludability (i.e., the reasons the alien may not be admissible to the United States) must be ascertained and a statement of each ground, or suspected ground, must be attached to this form. Please review the grounds of excludability carefully with the alien and remind the alien that a failure to disclose all grounds of excludability (conduct or conditions) on this form may result in exclusion or deportation from the United States. Then for each ground checked in Part A 7, you must provide a statement of all reasons why you believe discretionary waiver authority should be exercised favorably for this alien so that the alien may be admitted in the S classification. Be as specific as possible and attach affidavits, statements, memoranda, or other documentation as necessary to explain all the possible grounds of inadmissibility and surrounding circumstances. Specific reasons for exercising discretionary waiver authority should be presented whenever possible, e.g., if the alien has a history of drug abuse, you may present evidence of rehabilitation such as the affidavits of doctors, psychiatrists, or other experts.

**Documentation.** The evidence submitted with this request to verify the basis of the request, i.e., for a waiver, classification, or adjustment of status, may be in the form of affidavits, statements, memoranda, or similar documentation.

You must also submit for each alien named in this request:

- Two-sets of fingerprints and signatures on Form FD-258;

- Two-color-photos with a white background taken no earlier than 30 days before submission to the INS. They should be unmounted; printed on thin paper and show a three-quarter front profile of the right side of the face, with the right ear visible. The head should be bare unless the alien is wearing a headdress as required by a religious order. Lightly print the alien's name and A#, if known, on the back of each photo with a pencil; the name of the LEA may also be used.
- The alien's A#, FBI #, Social Security #, if known, and biographical information (Form G-325).

### PART IV. REQUIRED CERTIFICATIONS

**Alien Certifications.** The certifications made by the alien and made by you, the LEA requester, provide a critical record for the future. After you have carefully explained the certifications at Part B and reviewed all statements on or attached to the form for accuracy, read the certification to the alien and be sure that the alien understands each condition of admission and continued stay in lawful status. If the certification is translated to ensure the alien's understanding, please so indicate. Make sure the alien understands that adjustment of status is not available to the alien unless and until he or she has satisfied the conditions of admission and continued stay in lawful status in the S classification.

**LEA Certifications.** Your signature as a witness to the alien's certification certifies your assurance of the alien's understanding of his or her certification. LEA headquarters level certification is required to ensure that no promises have been made other than those afforded by section 101(a)(15)(S) of the Act and that full assumption of the responsibilities outlined in the request has been authorized. The name of the LEA agency contact on the case who is available by phone for questions and verification of information is also necessary.

**United States Attorney Certification.** The United States Attorney's certification is necessary if the alien witness or informant will be participating in a prosecution or investigation that falls within the jurisdictional authority of a United States Attorney or if this form is to be submitted by a State LEA. The United States Attorney may and sometimes does refer to the Criminal Division or another federal entity. In such a case, the referred entity must provide the required certification and documentation of the referral by the United States Attorney.

### PART V. FEE FOR REQUESTS FOR THE NONIMMIGRANT CLASSIFICATION

The fee for this form is \$150. **(This fee will not go into effect until the Service publishes a final regulation in the Federal Register adding a fee for Form I-854)** It is not refundable. Pay in the exact amount. Make check or money order payable to "Immigration and Naturalization Service." There will be an additional charge if your check is not honored. Please do not send cash in the mail.

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## **PART VI. WHERE TO FILE**

Requests for an S nonimmigrant classification or for an S nonimmigrant to file for adjustment of status, should be sent to:

**DOJ-OEO**  
**P.O. BOX 7600**  
**Washington, DC 20044-7600**

**Please note:** The Criminal Division will forward certified requests to the INS Commissioner, for adjudication of the request for S classification. No request for S classification may proceed to the INS without the certification of the Criminal Division.

## **PART VII. OTHER INFORMATION**

**Employment Authorization:** Witnesses and informants who have received S nonimmigrant classification are entitled to receive an Employment Authorization Document (EAD) enabling them to seek employment in the United States. Aliens so entitled may request an EAD by filing Form I-765 according to the instructions on that form. Form I-765 may not accompany this form and must be filed separately.

### **Authority For The Collection Of The Information.**

The authority to require you to file Form I-854, Inter-Agency Alien Witness and Informant Record, when requesting authorization to bring a witness or informant into the United States, is found at section 101(a)(15)(S) of the Act and the Congressional concerns behind that provision. Information you provide on Form I-854 is used to determine eligibility for the requested classification/authorization, to record the numbers of requests and determinations made on this form, to track and monitor the alien, and to provide Congress with a required annual report on the admission of alien witnesses and informants. Failure to provide all information as required may result in the denial or rejection of this application. The information you provide may also be disclosed to other Federal, State, local and foreign law enforcement, intelligence and regulatory agencies.

**Penalties For Perjury.** All statements made in response to questions in this application are declared to be true and correct under penalty of perjury. 18 U.S.C. 1546 provides in part:

Whoever knowingly makes under oath or as permitted under penalty of perjury under 28 U.S.C. 1746, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement-shall be fined in accordance with this title or imprisoned not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the United States Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under Section 274C of the Act. 8 U.S.C. 1324e. under 8 U.S.C. 1324e, a person subject to a final order for civil document fraud is deportable from the United States and may be subject to fines.

### **Paperwork Reduction Act Notice.**

A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, this collection of information is computed as follows: (1) learning about the law and form, **60 minutes**; (2) completing the form, **75 minutes**; and (3) assembling and filing the application **120 minutes**, for an estimated average of **4 hours and 15 minutes** per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, HQPDI, 425 I Street, N.W., Room 4307r, Washington, DC 20536; OMB No. 1115-0196. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

**Inter-Agency Alien Witness and Informant Record**

**PART A. To Be Completed by Law Enforcement Agencies. (See instructions for specific information.)**

1. Name of LEA/Requestor: \_\_\_\_\_

2. Requesting Agent: \_\_\_\_\_ Control Agent: \_\_\_\_\_

Address: \_\_\_\_\_ Phone No.: ( ) \_\_\_\_\_

\_\_\_\_\_ Fax No.: ( ) \_\_\_\_\_

Check if Applicable:

3.   Alien will be placed in danger in U.S./abroad (circle) as a result of providing information, etc.  
  Alien poses no danger to people or property of the U.S.  
  If the alien poses a danger, the danger posed by alien is outweighed by the assistance the alien will furnish.  
  Investigation.   Prosecution.   United States Attorney involvement.
4. Type of Request(s). (Attach legal basis for request)  
  S-5   S-6  
 State consular post at which visa will be sought: \_\_\_\_\_  
  Change of Status. - If change of status is requested, current INS status is \_\_\_\_\_  
  Adjustment of status (Go to PART F, after completing information in 5, 6, & 7, below)  
  Fee(s) attached.   Security concerns. State special instructions regarding security precautions.

PROVIDE A CLEAR STATEMENT OF THE OPERATIONS THAT FORM THE BASIS OF THE REQUEST (E.G. GRAND JURY SUBPOENA), THE OBJECTIVE OF THE REQUEST AND ANY BARGAIN THE REQUESTOR WISHES TO MAKE/HAS MADE WITH THE ALIEN. ATTACH COMPLETE CRIMINAL HISTORY, FBI# and SSN#

5. Alien's Name ( First Name, First and Middle Name):		Other Names Used:	
Alien's Address (Street Number and Name):		A#	1-94 #
City	State or Province:	Zip/Postal Code	Current Location of Alien:
Marital Status:	Date of Birth:	Place of Birth (City or Country):	Nationality
			Occupation:

Date of last entry to U.S. (Month/Day/Year) \_\_\_\_\_  Form G-325 attached  Form FD-258 attached  Photos attached

6. Provide all information requested in 5, above, for spouse, parents, and all sons and daughters of alien for whom an S classification is requested who seek derivative status on a separate piece of paper for each beneficiary.

7. For the above named alien, I request waiver(s) of the following grounds of excludability:  
 (Check all possible grounds & attach all relevant documents establishing the ground(s) of inadmissibility and why you feel a waiver is appropriate for this alien. This information must be provided for each alien named in 5 and 6 above. Please copy this checklist of grounds of excludability and submit for each derivative.)

- |                                                                                                  |                                                                                           |
|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| <input type="checkbox"/> communicable disease                                                    | <input type="checkbox"/> physical/mental disorder (dangerous)                             |
| <input type="checkbox"/> immigrant visa issued outside numerical limits                          | <input type="checkbox"/> drug abuser or addict                                            |
| <input type="checkbox"/> crime of moral turpitude                                                | <input type="checkbox"/> convicted of law pertaining to controlled substances             |
| <input type="checkbox"/> international child abduction                                           | <input type="checkbox"/> controlled substance trafficker                                  |
| <input type="checkbox"/> multiple criminal convictions                                           | <input type="checkbox"/> prostitute, or <input type="checkbox"/> procurer of prostitution |
| <input type="checkbox"/> engaged in unlawful commercialized vice                                 | <input type="checkbox"/> exercised diplomatic immunity to avoid prosecution               |
| <input type="checkbox"/> entrance prejudicial to public interest                                 | <input type="checkbox"/> unlawful activity related to national security                   |
| <input type="checkbox"/> involved in espionage, sabotage or laws relating to technology transfer | <input type="checkbox"/> terrorist activities                                             |
| <input type="checkbox"/> coming to overthrow the U.S. government                                 | <input type="checkbox"/> communist party member                                           |
| <input type="checkbox"/> foreign policy exclusion                                                | <input type="checkbox"/> public charge                                                    |
| <input type="checkbox"/> Nazi persecutor                                                         | <input type="checkbox"/> lacking labor certification                                      |
| <input type="checkbox"/> unqualified physician                                                   | <input type="checkbox"/> fraud/misrepresentation                                          |
| <input type="checkbox"/> previously removed-aggravated felony-20 year applicability              | <input type="checkbox"/> immigrant without a visa                                         |
| <input type="checkbox"/> stowaway                                                                | <input type="checkbox"/> draft evader-was immigrant when left                             |
| <input type="checkbox"/> nonimmigrant without a valid passport or visa                           | <input type="checkbox"/> alien accompanying helpless excludable alien                     |
| <input type="checkbox"/> previously excluded and deported                                        | <input type="checkbox"/> violator of section 274C                                         |
| <input type="checkbox"/> alien smuggler                                                          | <input type="checkbox"/> No waivers are requested/needed.                                 |
| <input type="checkbox"/> participant in genocide                                                 |                                                                                           |

**PART B. Certifications.**

**1. Alien Certification. (S classification request)** I certify under penalty of perjury that I have reviewed with the LEA all the information in Part A, disclosed all information to the best of my ability, and disclosed all reasons for which I may be excludable from the United States; that I shall report at least every three (3) months my whereabouts and activities as the above LEA shall require; that I understand I am subject to deportation for any grounds of excludability (conduct or condition) not disclosed at this time or for conduct committed after admission to the United States; that I shall abide by all conditions, limitations, and restrictions imposed upon my entry; that the classification I seek is temporary and will terminate within three (3) years; that I am restricted by the terms of my admission to very specific means by which I will be able to remain permanently in the United States; that I will pay Social Security and all applicable taxes on all employment in the United States and; that I hereby waive my right to a deportation hearing and to contest, other than on the basis of an application for withholding of deportation, any action for deportation instituted against me. **Certification: I certify that I have read and understand all the questions and statements on this form. If I do not understand English, I further acknowledge that this has been read to me in a language I do understand. The answers I have furnished are true and correct to the best of my knowledge and belief.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
LEA Witness: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Translator: \_\_\_\_\_ Language Used: \_\_\_\_\_ Date: \_\_\_\_\_

**2. LEA Certification.** I certify the above information is true and correct to the best of my knowledge; that I may make, have made, and will make no promises regarding the above alien's ability to adjust status or stay permanently in the United States other than those that comport with section 101(a)(15)(S) of the Act; that I will collect quarterly reports detailing the above alien's whereabouts and activities and forward required information to the Criminal Division; that I will immediately report to the Service if this alien fails to report quarterly or fails to comply or to cooperate with the terms and conditions of admission or if the alien commits any deportable activity after the date of admission. I further certify that I assume complete law enforcement responsibility for control and continued stay in lawful status of the alien, including necessary monitoring, travel arrangements for arrival and departure, safety precautions, and specified conditions of stay or departure, that I have provided a sworn declaration as to the basis of this petition and checked all available database information on the above alien, and that I have carefully reviewed the above statements with the alien to ensure that all terms and conditions are understood.

Translation (*this serves to verify alien certification of translation, above*)

Signature of HQ Chief of LEA: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_ Name of Agency Contact: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

**3. For United States Attorney Use Only (if applicable).** Because the alien's presence is essential to the success of a Federal or State investigation or prosecution, the United States Attorney recommends the above request be granted and further certifies that there has not been and will be no promise or promises at all regarding the above alien's ability to adjust status or stay permanently in the United States other than those that comport with section 101(a)(15)(S) of the Act.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Office: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

**4. For Department of State/Rewards Committee-S6 Classification Use Only.**

After checking all information, the Department of State:

- Certifies the alien is eligible to receive an award under 22 U.S.C. 2708(a). Date: \_\_\_\_\_  
 Certifies the alien is not eligible for such award.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
Title: \_\_\_\_\_ Office: \_\_\_\_\_

**PART C. For Department of Justice, Criminal Division Use Only.**

After checking and evaluating all waiver and other information available, the Department of Justice, Criminal Division:

- Certifies that, pursuant to section 101(a)(15)(S) of the Act and the request of the above LEA, the above alien is recommended for the S classification requested, that the above request(s) for waivers of excludability appear to warrant approval, that all conditions and limitations of the request for classification are attached, that this request falls within the numerical limitation for an S visa and that, therefore, this request is forwarded to the Commissioner for approval.  
 Denies Request

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
Title: \_\_\_\_\_ Office: \_\_\_\_\_

**PART D. For Immigration and Naturalization Service Use Only.**

Fee Received.  Waiver(s) of Grounds of Inadmissibility Granted Per Request.  
Note all grounds waived and conditions attached thereto.

LEA Request:  Granted  Forwarded to DOS/VO  Request Denied  
 Change of Classification Granted  Denied

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
Title: \_\_\_\_\_ INS Office: \_\_\_\_\_

**PART E. For Department of State/Visa Office (VO) Use Only.**

FORWARDED TO CONSUL BY VO FOR Visa Approval;  Not Forwarded

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
Title: \_\_\_\_\_ Office: \_\_\_\_\_

Visa Granted  Visa Denied Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_ Office: \_\_\_\_\_

**PART F. Request to Allow An S Nonimmigrant to File for Adjustment of Status to Permanent Resident.**

(This request may not be completed or submitted until the alien has fulfilled the terms and conditions of his or her S nonimmigrant classification.)

(For Department of Justice, Criminal Division use only)

(Please attach all relevant documentation establishing (1) the information certified to below; (2) the recommendations, and reasons for the certified recommendations.)

1. Name of LEA: \_\_\_\_\_ submitting request to allow an S nonimmigrant to file  
for adjustment of status: Date submitted: \_\_\_\_\_

**2. CRIMINAL DIVISION (ASSISTANT ATTORNEY GENERAL) CERTIFICATIONS.**

I Certify that (alien's name) \_\_\_\_\_ has

- If S-5:  Supplied the information that formed the basis of entry;  
 The information substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual as per terms of entry.
- If S-6:  Supplied the information that formed the basis of entry;  
 The information substantially contributed to the prevention or frustration of an act of terrorism against a U.S. person or property or the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism.
- If S-5 or S-6:  Has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956;  
 Has abided by all the terms, conditions and specific 22 U.S.C. 2708(a) limitations of the S classification.

Other comments:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
Title: \_\_\_\_\_ Office: \_\_\_\_\_

**3. FOR IMMIGRATION AND NATURALIZATION SERVICE USE ONLY:**

Adjustment  Other action

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_  
Title: \_\_\_\_\_ Office: \_\_\_\_\_

Remember to enclose or complete:

- ▶ INS Form I-854 for the alien witness. This worksheet is a mandatory supplement of that form.
- ▶ Part A of INS Form I-854 for each family member applicant.
- ▶ Part B.1 of INS Form I-854 for each family member applicant who is 18 or older.
- ▶ Biographical information on INS Form G-325 for the alien witness and each family member.
- ▶ Copies of any documents establishing qualifying family relationships. (Note: for adjustment of status, more rigorous proof of family relationship will be required.)
- ▶ Any documents (letters, affidavits, declarations, etc.) establishing inadmissibility or rehabilitation.
- ▶ Copies of INS documents and passports
- ▶ Current (within 30 days) NCIC records (rap sheets) for any alien witness or family member who is 16 or over.
- ▶ Two applicant fingerprint cards (FBI Form FD-258), each containing a complete set of fingerprints and signatures, for the alien witness. Two applicant fingerprint cards (FBI Form FD-258) must be completed for each family member who is 14 or older.
- ▶ Two recent color photos with white background for the alien witness and each family member. (See instructions to INS Form I-854 for photo specifications.)
- ▶ Application fee (not yet in effect as of 10/01/95)
  - \* Completed application packages should be submitted through the sponsoring law enforcement agency's headquarters.



U.S. Immigration  
and Customs  
Enforcement

We have determined that the totals listed below may be released in their entirety. Once these yearly totals have been vetted, they will be provided to ICF FOIA, so that they can prepare the final response to the requestor.

Year	S-Visas Processed	S-Visas Approved
2004	115	82
2005	106	78
2006	157	94
2007	139	80
2008	108	11 (applications still pending approval)

Attachment: Document detailing the number of S-Visas processed and approved from 2004 to 2008.

Office of Investigations  
Information Disclosure Unit