

Shining a Light on the "S" Visa:

*A Long History of
Unfulfilled Promises and
Bureaucratic Red Tape*

SUBSTANTIAL ASSISTANCE



Brad Gershel
Report Author

NATIONAL
ASSOCIATION
OF CRIMINAL
DEFENSE LAWYERS



NACDL
FOUNDATION FOR
CRIMINAL
JUSTICE



Copyright © 2021 National Association of Criminal Defense Lawyers

This work is licensed under the Creative Commons Attribution NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/4.0/>. It may be reproduced, provided that no charge is imposed, and the National Association of Criminal Defense Lawyers is acknowledged as the original publisher and the copyright holder. For any other form of reproduction, please contact NACDL for permission.

For more information contact:



National Association of Criminal Defense Lawyers®
1660 L Street NW, 12th Floor, Washington, DC 20036
Phone 202-872-8600
www.NACDL.org

This publication is available online at
www.NACDL.org/SVisaReport

Shining a Light on the “S” Visa:

***A Long History of Unfulfilled Promises
and Bureaucratic Red Tape***

Christopher W. Adams

President, NACDL

Charleston, South Carolina

Lisa M. Wayne

President, NFCJ

Denver, Colorado

Norman L. Reimer

Executive Director, NACDL & NFCJ

Washington, DC

Kyle O'Dowd

Associate Executive Director for Policy, NACDL

Washington, DC

Brad Gershel

Report Author

New York, New York

NATIONAL
ASSOCIATION
OF CRIMINAL
DEFENSE LAWYERS



NACDL
FOUNDATION FOR
CRIMINAL
JUSTICE

CONTENTS

About the National Association of Criminal Defense Lawyers and the NACDL Foundation for Criminal Justice	1
Preface.....	2
Foreword.....	3
Acknowledgements.....	4
Executive Summary.....	5
Overview of the S Visa	8
<i>Historical Background</i>	8
<i>Statutory Regime</i>	10
Leveraging Immigration Status	15
Findings.....	20
Recommendations.....	28
<i>Simplify the application process by shifting the focus away from layered oversight.</i>	28
<i>Amend the application procedure to provide for simultaneous review by the OEO and USCIS.</i>	29
<i>Improve inter-agency coordination and tracking by establishing a centralized case management system.</i>	30
Conclusion	31
Endnotes.....	32
Appendix A	36
Appendix B	59
Appendix C	64
Appendix D	65

ABOUT THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AND THE NACDL FOUNDATION FOR CRIMINAL JUSTICE

The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the goal of the criminal defense bar to ensure justice and due process for persons charged with a crime or wrongdoing. NACDL envisions a society where all individuals receive fair, rational, and humane treatment within the criminal legal system.

NACDL's mission is to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal justice system, and redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level.

NACDL members — and its 90 state, local and international affiliates — include private criminal defense lawyers, public defenders, active U.S. military defense counsel, and law professors committed to promoting fairness in America's criminal legal system. Representing thousands of criminal defense attorneys who know firsthand the inadequacies of the current system, NACDL is recognized domestically and internationally for its expertise on criminal justice policies and practices.

The NACDL Foundation for Criminal Justice (NFCJ) is a 501(c)(3) charitable non-profit organized to preserve and promote the core values of the American criminal legal system guaranteed by the Constitution — among them access to effective counsel, due process, freedom from unreasonable search and seizure, the right to a jury trial, and fair sentencing. The NFCJ supports NACDL's efforts to promote its mission through resources education, training and advocacy tools for the public, the nation's criminal defense bar, and the clients they serve.



National Association of Criminal Defense Lawyers®
1660 L Street NW, 12th Floor, Washington, DC 20036
Phone 202-872-8600
www.NACDL.org

This publication is available online at
www.NACDL.org/SVisaReport

PREFACE

Sometimes when one embarks on a journey, one ends up diverting from the anticipated destination. NACDL set out to study a problem identified by defense counsel representing non-citizens who provide cooperation to the government in exchange for the ability to remain in the United States through an S visa. All too often, the promise that the cooperating defendant will earn the special status is not fulfilled by the government. At the outset, when the study began, there was an expectation that this nonperformance was likely the result of bad faith on the part of government personnel. But, when the study was completed, it was clear that the flaws in the S visa program are far less attributable to bad faith than to bad government. The failure to provide the critical relief, even when it is clearly earned, is a consequence of the program's outdated legal and procedural architecture which has frustrated the basic intent of the program. As Andrew Weissmann notes in the foreword, the infrequency and uncertainty of ever getting an S visa presents enormous practical and ethical dilemmas for defense attorneys and unacceptable uncertainty for clients. One can agree or disagree with the role that cooperation plays in the American legal system, but when the promised reward is unjustifiably withheld, even if the denial arises without government malfeasance, it is nothing less than a bureaucratic bait and switch. With the publication of this report, NACDL seeks to rectify this intolerable injustice and ensure that the S visa program fulfills its intended purpose.

Norman L. Reimer

Executive Director

FOREWORD

In order to make most any sophisticated criminal case, the government needs the assistance of witnesses and even participants in the very crimes under investigation. Obtaining the assistance of victims and insiders is indispensable to cracking gang and organized crime cases, human tracking cases, large scale economic crimes, and public corruption matters, to name just a few. Whether one is considering the Enron corporation's demise, or the Special Counsel public corruption investigation, gathering the information and evidence from insiders is indispensable. And as defense counsel know well, prosecutors have numerous tools they can use to encourage the cooperation of witnesses and criminals.

But one tool, which is increasingly vital, is in need of reform, for the reasons so clearly articulated in this report. The tool at issue is the S visa. These special visas are designed to be granted by DHS to people who are cooperating with investigations and prosecutions in the United States. In theory, the S visas work to forestall deportation while an investigation is ongoing and while a prosecution and trial are pending. And after the conclusion of a trial, permanent residence status may be granted to the cooperating witness.

The S visa program was prescient, seeking to mitigate these immigration issues in an increasingly global world. Our planet and its most significant problems are global and that goes for crime as well. Foreign witnesses and cooperators are increasingly common. For the United States to enforce its laws, to protect its citizens and residents, our government must increasingly solicit the assistance of those who are not citizens or permanent residents of the United States. That becomes increasingly difficult if one consequence of cooperating with the government is deportation from the United States, either during or after a criminal investigation and prosecution. Any agent or prosecutor worth her salt is going to want to assure the would-be cooperator that deportation can be dealt with through the S visa program. And any competent defense counsel is going to seek such assurances: the absence of them will weigh against defense counsel advising her client to cooperate and risk deportation.

But the problem is that the administration of the S visa program has run into Washington, D.C. bureaucracy with a vengeance. Too many players have roles to play, and too much is done *seriatim*, not in parallel, resulting in a lack of certainty and a timeframe that is entirely counterproductive if the S visa program is going to work as intended. In order for the S visa program to provide the designed incentive to cooperate, the decision about the S visa has to be made quickly — it hardly benefits the government to have to stop an investigation in its tracks waiting for a decision. And a defense counsel will be far less willing to let her client cooperate until there is a clear sign that the S visa will be forthcoming.

In short, the report below — with its diagnosis of the problems and specific practical recommendations — is both timely and shines a light on “good government” solutions that are a win-win for all concerned. In a time of fractured government and political fissures, it is encouraging to read a report that all can and should get behind.

Andrew Weissmann
Partner, Jenner & Block LLP
Former FBI General Counsel

ACKNOWLEDGEMENTS

NACDL extends its deep appreciation to Brad Gershel, without whom this report would not have materialized. An associate at Ballard Spahr and rising star of the white collar bar, Brad Gershel approached NACDL with the idea of a report on the S visa program, undertook extensive record gathering and research, and prepared a report that NACDL is proud to issue.

The NACDL Foundation for Criminal Justice wishes to thank its donors, whose generosity makes reports such as this one possible.

Thanks also to the various individuals at NACDL who provided feedback and guidance, including Norman L. Reimer, Executive Director of NACDL; Kyle O'Dowd, Associate Executive Director for Policy; and Ivan J. Dominguez, Senior Director of Public Affairs & Communications. NACDL and the author would also like to thank Cathy Zlomek, NACDL Art Director, and her department for the design of the report.

EXECUTIVE SUMMARY

As changes in sentencing patterns over the past thirty years include dramatic increases in the length of sentences, the institution of cooperation has become pervasive in the practice of federal criminal law.



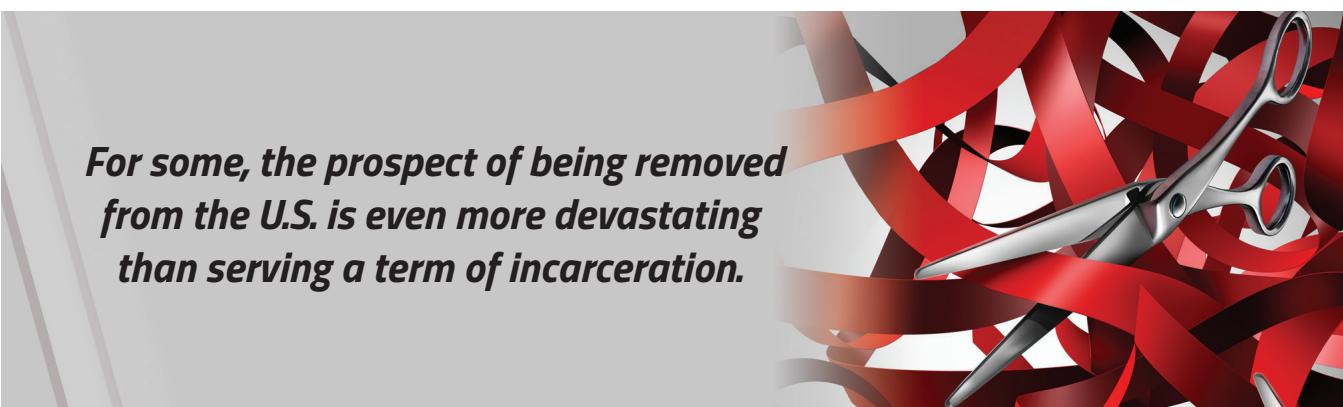
Anyone familiar with federal criminal defense can attest to the significance of “substantial assistance.” This term refers to the primary mechanism by which criminal defendants who provide valuable information to federal prosecutors are compensated for their cooperation. This compensation occurs when a United States Attorney makes a motion on behalf of a defendant pursuant to particular statutory provisions, thereby giving the sentencing judge explicit authority to impose a sentence either below the calculated United States Sentencing Guidelines sentencing range or — more significantly — below any statutorily imposed mandatory minimum sentence. It is thus no surprise that, as changes in sentencing patterns over the past thirty years include dramatic increases in the length of sentences, the institution of “cooperation” has become pervasive in the practice of federal criminal law. As observed by one Assistant United States Attorney, “[i]t is a rare federal case that does not require the use of criminal witnesses—those who have pleaded guilty to an offense and are testifying under a plea agreement, or those who are testifying under a grant of immunity.”¹

Notwithstanding the inherent investigative value, informant recruitment occurs generally in the shadows; the secrecy surrounding the practice enables the government to use almost any information it wants to induce a deal. When it comes to the cultivation of informants, negotiations between the government and the individual are not only unmediated by the usual constraints of arms-length negotiations; they can get deeply personal. Indeed, individuals become informants for a variety of reasons: money, fear of punishment for a crime, fear of criminal associates or revenge, civic duty, and repentance for past crimes, to list a few. To be sure, the majority of informants have some nexus with criminal activity, and have been subsequently recruited in exchange for leniency. As a result, most legal scholarship addressing informant recruitment has focused on informers who have broken the law: some scholars have raised concerns about the inherently coercive aspects of recruitment in the criminal context, while most are concerned with the challenges inherent to working with informants who might have themselves committed crimes.

Less attention has been paid, however, to the *means* of encouraging cooperation, including the dangle of immigration relief for foreign citizens. Here, one's incentive to cooperate is palpable: for some, the prospect of being removed from the U.S. (and as a corollary, leaving his or her family or community behind) — an otherwise unavoidable consequence of myriad criminal offenses — is even more devastating than serving a term of incarceration. U.S. law enforcement agencies (“LEAs”) have explicit authority to sponsor special visas to these prospective informants; one such visa is the “S” visa (named after the statutory section of the Immigration and Nationality Act giving rise to the admission category). Established as part of the Violent Crime Control and Law Enforcement Act of 1994, the S visa — in theory — involves a two-part process whereby nonimmigrant (temporary) status of up to three years is first granted to an informant while an investigation or prosecution is ongoing. If the investigation, or prosecution, or both are successfully completed partly because of the involvement of the informant, permanent resident status may be granted.

Despite the government having historically touted this visa as “crucial” to its prosecution of “heinous acts,” in reality, the S visa is an exceptionally rare benefit.² Not only have the annual numerical limitations set by Congress never been reached — they have never come close. As this Report explains, the problem is not lazy or incompetent people; nor is it a pattern of LEAs making assurances to cooperating witness in bad faith (as some might suspect). To the contrary, the problem is bureaucratic red tape; administrative chaos; a flawed application process that is mysteriously guarded from public scrutiny; and a lack of sufficient government incentives to undertake the daunting and drawn out process. There is, quite simply, a systemic unwillingness to issue these visas.

From the outside looking in, it is almost as if the administration of the S visa was designed not to work. Indeed, the application process resembles a theater of the absurd. The thicket of rules and procedures has layer upon layer of additional oversight; each new procedure necessitates someone’s approval in either the Department of Justice (“DOJ”), Department of State (“DOS”), or Department of Homeland Security (“DHS”). LEAs induce informants with the offer of sponsorship to encourage cooperation, only to later abandon their efforts to follow through. Meanwhile, even when an agent or prosecutor is committed to the process, anyone at any stage along the way can deny an application with little explanation as to why. Hamstrung by rules and regulations, LEAs simply do not have the capacity to follow through on assurances to informants deserving of S status. The result is fewer visas for LEAs and the informants they sponsor.



***For some, the prospect of being removed
from the U.S. is even more devastating
than serving a term of incarceration.***

If the goal of the S visa is truly to entice noncitizen cooperators with the opportunity to stay in the U.S. in exchange for their assistance in the investigation and prosecution of criminal activity, then the program should be reformed to accomplish that specific goal. The emphasis on “process” diverts resources from the real job of the S visa: providing concrete immigration benefits in exchange for vital information. As this Report explains, the stakes could not be higher: since the rush to recruit informants in the aftermath of the September 11 attacks, the immigration system has been among the most prominent pressure points for LEAs seeking to recruit foreign nationals. Meanwhile, because of the harsh immigration consequences flowing from most criminal convictions, non-U.S. citizens (including long-standing legal permanent residents, or “LPRs”) who are threatened with indictment are susceptible to prosecutorial pressure to cooperate. With fewer bargaining options, less protection, and potentially more to lose than informants recruited through monetary incentives or promises of sentence reductions, law enforcement’s immigration relief dangle is indeed a compelling one. And as long as immigration law provides for extreme sanctions (detention and deportation), while at the same time holding great promise (the right to live and work in the United States legally), the dangers of abuse and coercion are magnified in a visa program that mandates only limited protections for the individual.

Because of the harsh immigration consequences flowing from most criminal convictions, non-U.S. citizens ... who are threatened with indictment are susceptible to prosecutorial pressure to cooperate.



The aim of this Report is thus to shed light on a law enforcement tool that is little understood. To that end, it will share data obtained from years of Freedom of Information Act requests, together with data obtained from other sources about the administration of the S visa — data that until now was not known to the public. This Report will next attempt to explain how the data reinforces the fear among scholars and practitioners alike that the visa largely represents an empty promise of immigration relief. Finally, to address these varied and significant concerns, this Report will offer a series of measures the government can adopt to cut through the S visa program’s suffocating red tape and move it closer to Congress’s intent in establishing it.

OVERVIEW OF THE S VISA

Historical Background

Following the 1993 bombing of the World Trade Center in New York City, Congress amended the Immigration and Nationality Act to provide a “new mechanism” of immigration relief to foreign nationals who serve as government witnesses and informants.³ Chief among the goals of Congress in establishing the visa was to regularize the exchange of legal residency for information of particular value to law enforcement. More specifically, prior to passage, LEAs were able to incentivize foreign nationals to cooperate only through either the Federal Witness Protection Program (“Witsec”) or discretionary Immigration and Naturalization Service (“INS”)⁴ action (which postponed deportation indefinitely). A principal problem with these processes was that most witnesses remained in a tenuous immigration status. In short, immigration law at the time required anyone who wished to obtain permanent residency — including foreign cooperators whose identity the government had gone to great lengths to protect — to publicly disclose their real names and backgrounds. Insofar as revealing one’s identity would pose untenable safety concerns, these witnesses were “exiled to an eternal limbo.”⁵ By formally amending the immigration law to establish the S visa, Congress thus sought to standardize a procedure that would allow foreign nationals to apply for immigration relief as a reward for their cooperation while, at the same time, ensure that they (and members of their families) were adequately protected.⁶

While the S visa is available to informants concerning a wide range of criminal offenses, Congress’s intent to connect it to terrorism is unmistakable.



While the S visa is available to informants concerning a wide range of criminal offenses, Congress’s intent to connect it to terrorism is unmistakable. The most obvious proof is the legislative history, which is replete with references to and anecdotes concerning the nation’s war on terror. One notable example is a 1992 Senate hearing entitled *Terrorist Defectors: Are We Ready?*, which recounts the story of Adnan Awad, once labeled the “highest-ranking Iraqi terrorist ever to defect to the West” and still considered “one of the true heroes in the international battle against terrorism.”⁷ Backing out of a terrorist mission, Awad turned himself in at an American embassy, joined Witsec, and assisted U.S. officials in thwarting terrorist plots, identifying terrorists, and securing a verdict against the terrorist responsible for the bombing of Pan Am Flight 830. Through this process, U.S. officials provided assurances that Awad would be given U.S. citizenship — these assurances did not materialize until 2000, sixteen years after U.S. attorneys had

promised. As Awad's attorney would later recall, “[t]he problem with Awad was the whole process. ... There was no one person trying to jerk him around. There was just a complete bureaucratic breakdown.”⁸

After hearing Awad's testimony, Sen. Joseph Lieberman acknowledged that gaps in U.S. immigration law for such witnesses could be costly:

[I]t seems to me that the ability to break through the normal immigration bureaucracy in order to give appropriate status in this country to a defector, an informant or their family members, is critical to people's lives. It seems like a small bureaucratic matter but... it may be just enough to entice a would-be terrorist to defect and come to this country as opposed to killing people.⁹

At the same hearing, the Federal Bureau of Investigation (“FBI”) also emphasized the need to create immigration incentives for potential witnesses. One high-ranking FBI official stated:

The ability to issue a permanent resident alien card in a timely fashion would significantly enhance the FBI's counterterrorism mission. In some instances it would be a critical advantage to be able to offer permanent residency in the [U.S.] to aliens who provide extraordinary service to the [U.S.] in an investigation of a terrorist incident involving U.S. citizens. It would be most unfortunate and unacceptable to have key witnesses lost and as a result, critical evidence and information withheld, due simply to the time it takes to procure permanent resident alien status for these individuals.¹⁰



Additional evidence of Congress's intent to connect the S visa to terrorism can be gleaned from votes in 1999 and 2001 to extend the governing statute. For example, during the 1999 vote to reauthorize the visa program (the original legislation contained a five year sunset provision), Rep. Sheila Jackson Lee shared an anecdote of a flight attendant aboard a plane on which a bomb had been placed and whose testimony led to the conviction of a major terrorist.¹¹ On September 12, 2001, the day before the S visa program was set to lapse and while the nation was reeling from the terrorist attacks in New York and Washington, D.C., Sen. Edward Kennedy introduced legislation providing permanent authority for the program.¹² During the Senate hearing on the bill, Sen. Patrick Leahy stated:

[I]n this time of tragedy, there are a few things Congress can do to provide immediate assistance. Passage of this legislation is one of them. ... The visa allows foreign nationals

with critical information about criminal cases, especially events of terrorism, to remain in the United States legally for the purpose of cooperating with law enforcement. ... Our law enforcement officials face a terrible responsibility in seeking out the perpetrators of these evil acts. I am pleased to cosponsor this legislation, and hope that it helps in this search.¹³

The Senate passed the bill by unanimous consent that same day; the House similarly passed the bill by unanimous consent. Before the House vote, Rep. George Gekas stated:

Mr. Speaker, this issue comes before us at a very appropriate time. It was about 2 days ago, maybe 3 days ago now considering the time is after midnight, authority ran out for our government, through the Attorney General, to be able to bring in alien witnesses for cases involving terrorists, of all things... That authority has run out, and it ran out almost immediately after the events took place in the Pentagon and in New York. So we have to reinstate it as fast as possible. That is why we are here tonight, because now it becomes even more urgent that we be in a position to be able to authorize the Attorney General to continue building the cases against these new terrorists.¹⁴

Indeed, the link between the S visa and the nation's war on terror stretches beyond speeches and bills at the Capitol. Despite the visa's existence for a number of years, the DOJ began to advertise the availability of S visas widely in the immediate aftermath of the September 11 attacks. For example, in November 2001, Attorney General John Ashcroft asked "freedom-loving people of all nations" "to come forward to the FBI with any valuable information they have to aid in the war on terrorism," in return for an "opportunity to be a participant in a visa which could lead to citizenship."¹⁵ Later, during an appearance on ABC's *Good Morning, America*, Ashcroft said this "new initiative" was "designed to say to people that if you'd like to have an improved visa status for your own presence in the [U.S.] and a pathway to citizenship, one of the ways you can do that is by providing reliable and useful information about terrorism."¹⁶ During a Senate hearing on DOJ's response to the September 11 attacks, one senior official emphasized that the "war on terrorism will be fought not just by our soldiers abroad, but also by civilians here at home," and touted the availability of S visas to "our nation's guests" who come forward with useful and reliable information about persons who have committed, or who are about to commit, terrorist attacks.¹⁷

Statutory Regime

The S visa is codified at 8 U.S.C. § 1101(a)(15)(S), which includes within the definition of nonimmigrant:

(S) subject to section 1184(k), an alien —

- i. who the Attorney General determines —
 - (I) is in possession of critical reliable information concerning a criminal organization or enterprise;
 - (II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

- (III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or
- ii. who the Secretary of State and the Attorney General jointly determine —
- (I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;
 - (II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;
 - (III) will be 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, and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien.



An S visa application and award carry onerous requirements for both the non-U.S. citizen and the sponsoring LEA.

Thus, the S visa is available to witnesses in both criminal and terrorist-related investigations and prosecutions (referred to in the Code of Federal Regulations (“CFR”) as “S-5” and “S-6” status, respectively). It is also available to a witness’s spouse, children, and parents (set forth in the CFR as “S-7” status). S-5 or S-6 recipients, also known as “principal” recipients, must supply “reliable” and “critical” information to an investigation involving a criminal organization or enterprise, and their presence in the U.S. must be “essential to the success of the investigation or prosecution.”¹⁸ Regarding terrorist investigations or prosecutions, the statute requires an additional showing that the foreign national “has been placed in danger as a result of the cooperation.”¹⁹ In exchange, principals and their qualifying family members may be awarded with nonimmigrant (temporary) status of up to three years.²⁰ By law, the government may not issue more than 200 S-5 visas and 50 S-6 visas.²¹ S-7 grants do not count toward these numerical limits.

An S visa application and award carry onerous requirements for both the non-U.S. citizen and the sponsoring LEA. For example, as part of the application process, witnesses (and any family members also seeking S status) must waive their right to a removal hearing and the right to contest a removal action (other than on the basis of an application for withholding of deportation).²² In other words, if an application is mishandled or forgotten and the witness (or a member of his or her family) subsequently faces deportation, there is no access to judicial review. Even after being awarded S status, visa holders must report quarterly to the sponsoring LEA and, as to the S-5 or S-6 recipient, fulfill all terms of cooperation. The LEA, for its part, must submit quarterly and annual reports to the DOJ that include documenting S visa holders' degree of compliance with the terms of their stay.²³ Certain LEAs impose still stricter requirements. The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), for example, designates two agents to supervise each sponsored foreign national; these agents must submit a summary of the supervision to ATF headquarters every 30 days.²⁴

Foreign nationals also may not seek to obtain S status on their own. Instead, the decision to apply rests solely with the LEA for whose investigation the witness or informant provides assistance. This process provides for the use of Form I-854, *Inter-Agency Alien Witness and Informant Record*²⁵ to, in part, record the nature of the informant's cooperation and the basis for the LEA's position that sponsorship is warranted, articulate why the continued presence of the witness is needed, and furnish "complete information" as to each applicable ground of inadmissibility (i.e., grounds that ordinarily may bar a foreign national's admission to the U.S., including prior criminal activity or unlawful presence within its borders).²⁶ Form I-854 additionally requires certifications from both the LEA's highest-ranking official and the U.S. Attorney with jurisdiction over the investigation that (1) the witness or informant is essential to an investigation or prosecution, (2) his or her continued presence in the U.S. is in the national interest, and (3) no promises regarding immigration benefits have been or will be made in exchange.²⁷

The sponsoring LEA must then file this information with the Assistant Attorney General of the Criminal Division, where it undergoes an additional layer of scrutiny. There, the Office of Enforcement Operations ("OEO"), and more specifically, its Policy and Statutory Enforcement Unit ("PSEU"), will "balance the value of an alien's cooperation against the factors making an alien inadmissible."²⁸ In other words, the PSEU will determine the "merits" of the witness or informant's application, evidently taking into account such factors as whether he or she is employed, pays taxes, or has family members who are U.S. citizens.²⁹ Where necessary, the OEO may put an application before an "advisory panel" composed of representatives of the USCIS, U.S. Marshals Service ("USMS"), FBI, Drug Enforcement Administration ("DEA"), State Department, and other LEAs to determine which cases should receive priority.³⁰

Upon the PSEU's recommendation to the Assistant Attorney General that a witness or informant's circumstances merit certification, and in the event the Assistant Attorney General concurs, the application next proceeds to DHS.³¹ There, the application undergoes yet another layer of scrutiny by the Immigration and Customs Enforcement, Homeland Security Investigations directorate ("ICE-HSI").³² Specifically, the directorate's Parole and Law Enforcement Programs Unit will review the witness or informant's Alien File³³ to identify any grounds for inadmissibility that have not already been addressed in Form I-854 (because DHS is the only agency with access to an informant's Alien File, it may contain information not otherwise known to the LEA, such as attempts to illegally enter the U.S.).

Upon ICE-HSI’s review of the Alien File, the application next is sent to the agency’s Executive Associate Director who, upon his or her recommendation, will submit the application to USCIS for final adjudication. There, USCIS may choose, in its sole discretion, to waive any ground of inadmissibility applicable to the informant (except for those regarding Nazi persecution, genocide, torture and extra-judicial killings).³⁴ In the event USCIS denies the application, the Assistant Attorney General, Criminal Division, may object within seven days, in which case the application “will be expeditiously referred to the Deputy Attorney General for a final resolution.”³⁵ However, neither the applicant nor the LEA that sponsored him or her has a right to appeal the decision.³⁶

While an S visa is valid for only three years (it cannot be extended), in cases where the witness or informant has “substantially contributed” to either the success of a criminal investigation or prosecution (*i.e.*, the case has ended successfully for the government), or has contributed to the “frustration of an act of terrorism against a [U.S.] person or [U.S.] property,” he or she may be eligible for permanent residency.³⁷ Should a witness or informant wish to apply for such status, it is incumbent upon the LEA that initially sponsored the application(s) to do so. The decision whether to grant such a request rests first with the Assistant Attorney General; should he or she decide to certify the request, the application will next proceed to the USCIS for a final determination.³⁸

Importantly, while a LEA may seek adjustment of status regardless of the availability of immigrant visa numbers, permanent residency for S visa holders is contingent upon the availability of a visa number under the worldwide allocation for employment-based immigrants (U.S. immigration law creates preference categories for family-sponsored, employment-based, and diversity immigrants).³⁹ In short, each employment-based preference has an annual allocation for approximately 40,000 individuals, and the remaining preferences allow 10,000 for each preference, not to exceed 140,000 individuals annually.⁴⁰ The preference categories are for (a) priority workers, who are noncitizens with extraordinary ability, outstanding professors, and multinational executives; (b) professionals with advanced degrees or noncitizens with exceptional ability in the sciences, arts, or business; (c) skilled workers, unskilled workers, or professionals with baccalaureate degrees; (d) other special immigrants, a group comprised primarily of religious workers; and (e) entrepreneurs investing a certain amount of capital to start up a new business.⁴¹ Because holders of S visas who seek permanent resident status are primarily unskilled workers, these individuals typically will belong to the third preference group.⁴² In other words, those who seek adjustment of status will often be placed near the back of the line.

S VISA APPLICATION PROCESS

LEA PREPARES APPLICATION

- Form 1-854
- Certifications from LEA's highest-ranking official and U.S. Attorney with jurisdiction

APPLICATION SUBMITTED TO ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

- Office of Enforcement Operations ("OEO")
- Optional review by "advisory panel" of USCIS, State Department, and LEAs

FINAL REVIEW BY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

REVIEW BY DHS

- Immigration and Customs Enforcement, Homeland Security Investigations directorate ("ICE-HSI")
- Executive Associate Director

REVIEW BY USCIS

- Approved (FINAL)
- Denied
- Assistant Attorney General, Criminal Division
 - >> Deputy Attorney General

LEVERAGING IMMIGRATION STATUS

Enlisting immigration vulnerabilities by dangling the possibility of relief for a non-U.S. citizen whose center of life is in the U.S., or when there is a fear of retribution if they were to be forced to return to their country of citizenship, is inherently coercive.



While all rewards predicated on cooperation carry difficulties, the use of immigration law for this purpose is particularly troublesome. Simply stated, immigration rewards entail many of the same concerns that have been voiced in the criminal context: just as prosecutors may determine, in their sole discretion, whether to move the trial court to impose sentences below the advisory guidelines (or any mandatory minimum sentence) as a reward for cooperation, the determination of whether a witness or informant's cooperation is "deserving" of immigration relief rests solely with the unreviewable discretion of LEAs. Thus, while the S visa may have been codified to bring "uniformity and consistency to the process,"⁴³ that process excludes the courts from independently assessing the value of the cooperation provided, and whether an agency's exercise of discretion was in good faith.

Moreover, because of the harsh immigration consequences flowing from most criminal convictions, foreign nationals threatened by a criminal prosecution are susceptible to prosecutorial pressure to cooperate. Indeed, immigration relief as a reward tool has only grown in importance as other immigration benefits have been restricted or eliminated. As criminal and immigration law scholar Nora Demleitner notes, "[such] immigration benefits in exchange for cooperation have become increasingly more valuable as the number of deportable offenses has risen dramatically, and immigration judges have been deprived of much of their discretion to avert [deportation]."⁴⁴ Demleitner questions the wisdom of using immigration benefits in this manner: "[T]he harshness [of immigration law] and the limited venues for averting deportation make the only alternative provided — cooperation — even more ripe with abuse."⁴⁵ In other words, enlisting immigration vulnerabilities by dangling the possibility of relief for a non-U.S. citizen whose center of life is in the U.S., or when there is a fear of retribution if they were to be forced to return to their country of citizenship, is inherently coercive. Insofar as immigration law, by definition, applies only to a vulnerable population group (non-U.S. citizens), the harshness and the limited venues for averting deportation make cooperation (often the only alternative provided) ripe for potential abuse.

Indeed, the fact that the underlying assumption behind the S visa is that the informant is interested in residing in the U.S. only heightens this concern. That is, an inherent problem with the use of immigration relief as an incentive or a reward for cooperation is that it is viewed through the false premise of an everyday market transaction, whereby the government and non-U.S. citizens are parties to a transaction and “bargain” toward resolution. This view, even if correct, is severely undermined when one party may exact tremendous leverage over the other while, at the same time, remain free to break its promises or assurances of good faith without recourse. For example, even when a LEA promises to submit an application on the informant’s behalf, due to the requirement that the informant waive his or her recourses in S visa agreements, a LEA suffers no legal backlash when it fails to fulfill its side of the bargain.

When viewed through this lens, it is not surprising that LEAs have, in fact, leveraged immigration vulnerabilities to recruit informants. While on paper LEAs are prohibited from promising immigration relief, it has not stopped the FBI, for example, from promoting the “immigration relief dangle,” presumably referring to the practice (widely reported but officially denied) of offering immigrants assistance with their legal status in exchange for information.⁴⁶ While there are no statistics available for how often law enforcement has retreated on assurances to informants, a few stories have received media attention due to the work of investigative journalists and community advocates. In 2010, NPR published a story on Ernesto Gamboa, an El Salvadoran man who worked with federal agents for 14 years and, despite having provided a “significant public benefit” through his help with state and federal drug investigations (through which he reportedly assisted in obtaining nearly 100 convictions), had not been sponsored for an S visa.⁴⁷ Feeling trapped, Gamboa quit working for the government. Weeks later, ICE revoked his parole and arrested him.

Even when a LEA promised to submit an application on the informant’s behalf, due to the requirement that the informant waive his or her recourses in S visa agreements, a LEA suffers no legal backlash when it fails to fulfill its side of the bargain.



During a Senate committee hearing in 2009, Senator Maria Cantwell confronted then-DHS Secretary Janet Napolitano with Gamboa’s case.⁴⁸ Senator Cantwell stated, in part:

[Gamboa] was an individual who served as a confidential informant, and, for the past 14 years, assisted law enforcement in the dismantling of large and dangerous drug operations. He frequently put himself at risk. He worked with the Washington State Patrol, the [FBI], the DEA, and INS, and with [ICE,] ... [and] his cooperation was critical to the success of Federal prosecutors in seizing hundreds of pounds of cocaine and methamphetamine, as well as large seizures of money and weapons.

During all the time that he was cooperating with law enforcement over that time period, he was promised that he would get help with his immigration status; but, instead, in July he was detained by ICE and placed on removal, despite all of the good work that he had been doing previously for these various agencies. And so, I'm expressing concern over this case, because he's kind of in limbo; he can't work, because he doesn't have paperwork, and he can't get — if he is returned to El Salvador, I'm sure he will likely be killed. And so, if we don't help the Gamboas, who have been the informants for us, how are we going to recruit other people to helping us with finding drug traffickers and criminals?

In response, then-Secretary Napolitano stated:

Be happy to look into it. This goes to the intersection between [DOJ] and [DHS], where [DEA] doesn't have authority to make immigration representations. Sometimes that gets lost in the shuffle. DEA needs to bring ICE in, or vice versa sometimes. So, I think that illustrates, perhaps, what is happening with Mr. Gamboa. I'll be happy to look into the situation.⁴⁹



Gamboa is not alone. In any number of cases, foreign informants have put everything on the line for an S visa, only for the government to turn around and initiate removal proceedings against them. In 2017, *The Washington Post* reported the arrest of a former lieutenant in a Somali national-security agency.⁵⁰ The man prevented a “major terrorist attack” on a U.S. embassy in Africa, uncovered support networks for some of the September 11 hijackers, and probed the killings of U.S. servicemen in Somalia. An FBI agent swore in an affidavit that it is “very likely that many, many people would have been killed” if the man had not cooperated. The man became an informant to avoid deportation in 1998, after being arrested for criminal immigration fraud. He continued that work off and on for nearly two decades, even as he accumulated minor criminal charges. Meanwhile, the agent who submitted a “thick packet” in support of the man’s S visa application told the newspaper that he fears that the visa request “fell through the cracks.”⁵¹ The man reportedly told his latest FBI handlers early in 2017 that he would not work for them anymore. Shortly afterward, ICE arrested him. As a result, the man faced deportation to a country where his history of cooperation with the U.S. government may well have cost his life.

The government’s treatment of Nervin Coronado, another cooperator who sought an S visa, warrants attention as well.⁵² Prior to his deportation in 2019, Coronado had lived in the U.S. since he was twelve years old. His parents are U.S. citizens and his spouse, with whom he was raising three children in the U.S., is also a U.S. citizen. In 2009, Coronado was charged with participating in a mortgage fraud scheme. Shortly after his arrest, he agreed to meet with the government and provide information regarding his own misconduct and that of his coconspirators, pursuant to proffer agreements. In 2010, Coronado pleaded guilty and agreed to cooperate. As to the possibility of an S visa, his cooperation agreement contained the following provision:

If the defendant requests, and in the Office’s judgment the request is reasonable, the Office will recommend to [DOJ] that the defendant and, if appropriate, other individuals, be issued an S Visa Classification, it being understood that the Office has authority only to recommend and that the final decision whether to grant such relief rests with [DOJ], which will make its decision in accordance with applicable law.⁵³

During his period of cooperation, Coronado provided the government with information that, according to the government, helped lead to the arrest and conviction of nine individuals involved in various mortgage fraud schemes, including a former New York State Senate candidate.⁵⁴ Coronado also provided information that facilitated the arrest of two attorneys, and later testified as a witness at the trial of those individuals.⁵⁵ During and after this time, Coronado’s counsel made multiple requests to the U.S. Attorney’s Office (“USAO”) to sponsor Coronado for an S visa. The government repeatedly declined, citing the absence of “verifiable safety concerns” posed by Coronado’s deportation, based on the fact that “[m]ost, if not all, of the defendants implicated by Coronado’s cooperation are U.S. citizens with limited or no connections to the Dominican Republic, Coronado’s country of origin.”⁵⁶

But the government’s rationale did not square with the applicable statute (nor does it at present) or, at the time, even its own policies. As discussed at p. 11, *supra*, only a terrorism-related informant is required to demonstrate safety concerns as a condition precedent of an award of an S visa. It goes without saying that Coronado’s cooperation had nothing to do with terrorism — to the contrary, the information he provided to the government related to mortgage fraud and bank fraud. Tellingly, the U.S. Attorney’s Manual (at the time) reinforced Coronado’s argument that there was no need to demonstrate safety concerns:

The S nonimmigrant classification is generally available to aliens who would otherwise be inadmissible to or deportable from the United States (for example, due to criminal convictions or certain problems with immigration status). The statute authorizes the [DHS Secretary] to waive most grounds of inadmissibility. The program is *particularly useful* for witnesses or informants who would otherwise be in danger in their home countries. *It is also a substantial benefit for many other witnesses and informants who might not otherwise be able legally to enter or remain in the United States.*⁵⁷ (emphasis added)

In other words, while the visa may be “particularly useful” for those likely to be placed in danger in their home country, the DOJ plainly recognized that this was not a prerequisite to sponsorship altogether.

It is worth noting that at the time of this Report, both the standard language in cooperation agreements pertaining to the S visa, and the DOJ's internal policies relating to the S visa, have changed to reflect the rationale expressed by the government in refusing Coronado's requests. Specifically, the standard language of its cooperation agreements now provides that any decision to sponsor an informant will be based upon a demonstrable safety need:

If the defendant requests, and in the Office's judgment the defendant's deportation to [home country] at the conclusion of sentence in connection with this case would pose a significant threat to the defendant's safety, and S Visa relief is warranted, the Office will recommend to [DOJ] that the defendant and, if appropriate, other individuals, be issued an S Visa Classification...

Ultimately, an immigration judge ordered Coronado's removal from the U.S. in June 2016. After a series of administrative appeals and appeals to the federal courts, Coronado became subject to a final order of removal and in 2019, he was deported.

FINDINGS

While the prospect of an S visa may be tempting bait for potential informants, in reality, the chances of securing one are slim to none.

While the prospect of an S visa may be tempting bait for potential informants, in reality, the chances of securing one are slim to none. As Table 1 indicates, the annual numerical limitations set by Congress have never been reached; with respect to the S-6 (terrorism) visa, only six have been issued in the program's 25-year history, five of which were awarded in 1995, the time the visa first became available.

Table 1.
Foreign Citizens Admitted Under S Visa Category, FY1995 — FY2018⁵⁸

Fiscal Year	S-5 Visas Issued	S-6 Visas Issued	S-7 Visas Issued
1995	54	5	77
1996	98	0	21
1997	35	0	19
1998	56	0	36
1999	50	0	33
2000	21	0	17
2001	105	0	122
2002	43	0	40
2003	30	0	28
2004	44	0	37
2005	53	0	74
2006	91	0	80
2007	44	0	0
2008	12	n/a	6
2009	5	n/a	10
2010	3	n/a	3
2011	57	n/a	61
2012	60	0	71
2013	27	0	20

2014	28	0	19
2015	26	0	15
2016	45	0	40
2017	25	0	15
2018	16	1	16
Total	1028	6	860

One might be surprised by the rarity of S-6 visas; as explained above, the war on terror was at the forefront of Congress's mind in establishing, extending, and later making permanent the S visa program. But as some scholars and practitioners have noted, the lack of incentives for LEAs to apply for S-6 visas, coupled with the bureaucratic process involved in obtaining an S-6 visa, are likely to blame.⁵⁹ For these observers, the potential benefits LEAs stand to gain from making use of the visa's availability are outweighed by the lengthy process involved, especially if an LEA is free to circumvent the process or break its promises without recourse.⁶⁰ Data obtained by NACDL supports these arguments.

The potential benefits LEAs stand to gain from making use of the visa's availability are outweighed by the lengthy process involved, especially if an LEA is free to circumvent the process or break its promises without recourse.

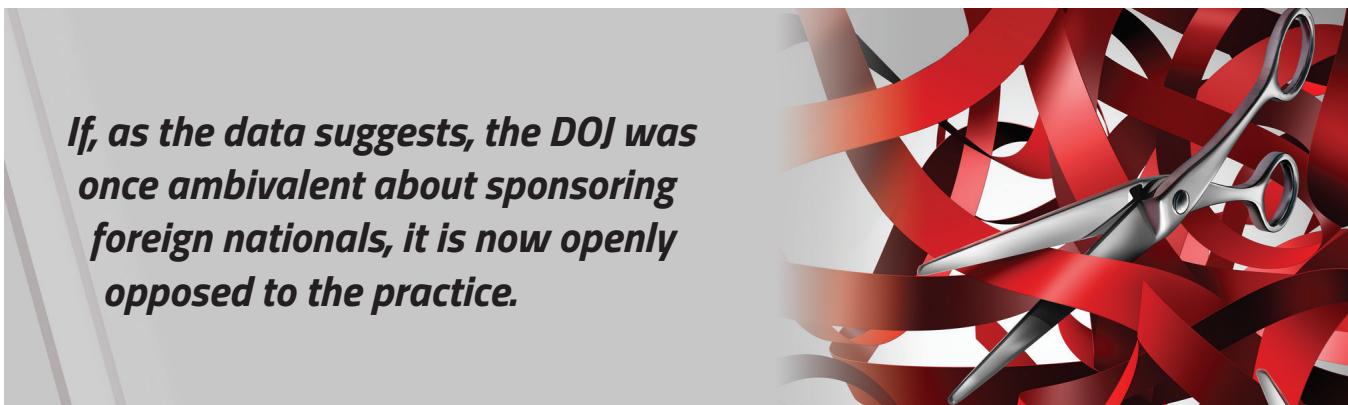
The data also makes plain that certain LEAs have been more willing than others to undertake sponsorship for its informants. As Table 2 indicates, from 2005 through 2018, about 93 percent of all applications that made it to USCIS were submitted by either the DEA, FBI or ICE (including the former INS). In that same period, applications submitted by any of the 94 USAOs account for only seven applications.

Table 2.
S Visa Applications Received and Approved by USCIS, FY2005 — FY2018

LEA	Received (S-5 or S-6)	Received (S-7)	Approved (S-5 or S-6)	Approved (S-7)
ATF	12	7	10	6
CBP	1	1		
DEA	135	109	103	82
FBI	156	163	114	104
FDIC	1	0	0	0
ICE-HSI	130	124	110	117
IRS	4	6	2	3
DOJ-OIG	0	0	4	0
STATE/LOCAL	4	1	8	5
USAOs	7	8	0	0
U.S. Postal Inspection Service	2	1	0	0
U.S. Secret Service	1	2	1	2
TOTAL	453	422	352	319

That the various USAOs have sponsored so few applications for S status is notable in several respects. First, as described above, the DOJ has in the past emphasized the visa as an important tool in the nation’s war on terror. Indeed, when the bill providing permanent authority for the program was sent to President Bush for his signature, the DOJ sent a letter to the White House expressing its strong support for the measure.⁶¹ Meanwhile, it appears that no S visas were issued to cooperators assisting the investigation of the September 11 attacks (according to the data, USCIS did not receive an application from *any* of the USAOs until 2014, long after that investigation had concluded). If, as the data suggests, the DOJ was once ambivalent about sponsoring foreign nationals, it is now openly opposed to the practice: in 2017, the U.S. Attorney’s Manual was amended to provide that sponsorship for S visas should be undertaken *only* by LEAs, not by federal prosecutors.⁶² Evidently, this policy change is due to “logistical concerns” associated with the various monitoring and reporting requirements that would apply in cases where sponsorship is granted.⁶³

If, as the data suggests, the DOJ was once ambivalent about sponsoring foreign nationals, it is now openly opposed to the practice.

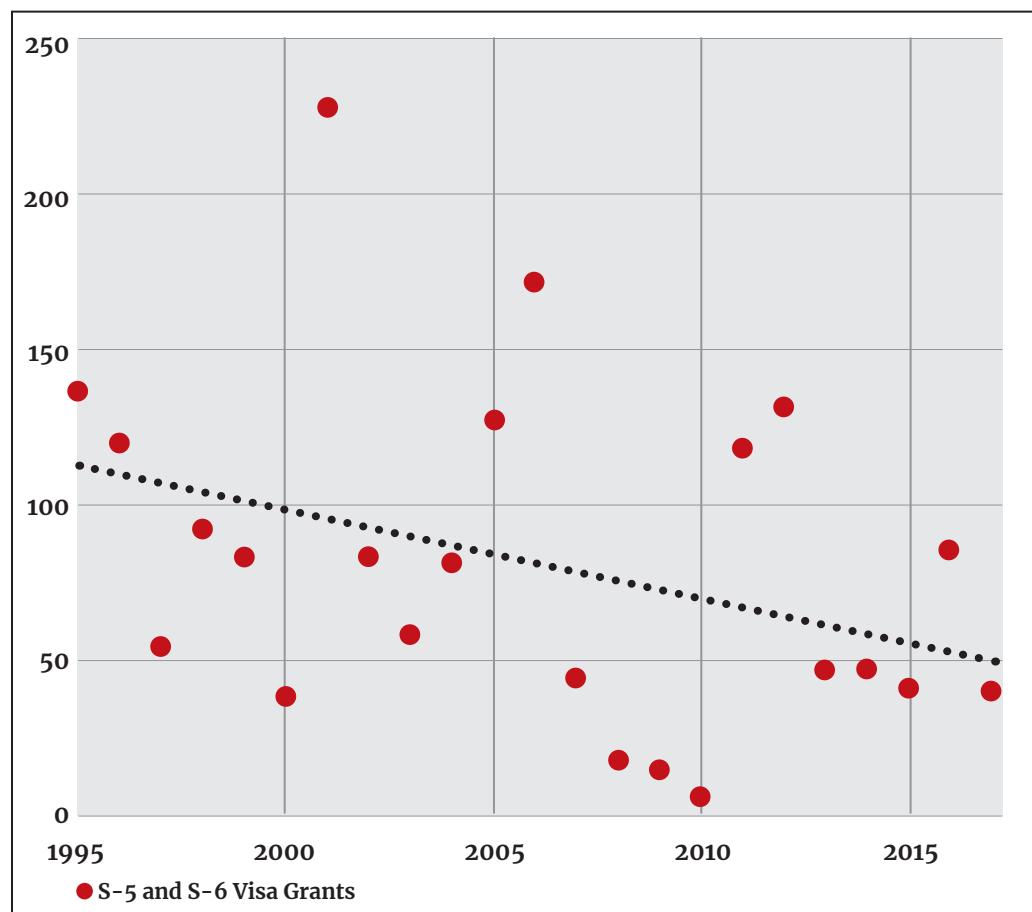


In all, despite the wide definitional scope of “law enforcement agency” under the S visa statute, the LEA with whom a foreign informant decides to cooperate appears to be a critical variable in the pursuit of an S visa.

Another important observation is the clear downward trend in the number of S visas issued annually. As Chart 1 illustrates, this trend appears to have sprung up almost immediately after the program’s establishment.

The LEA with whom a foreign informant decides to cooperate appears to be a critical variable in the pursuit of an S visa.

Chart 1.
S Visa Application Grants, FY1998 — FY2018



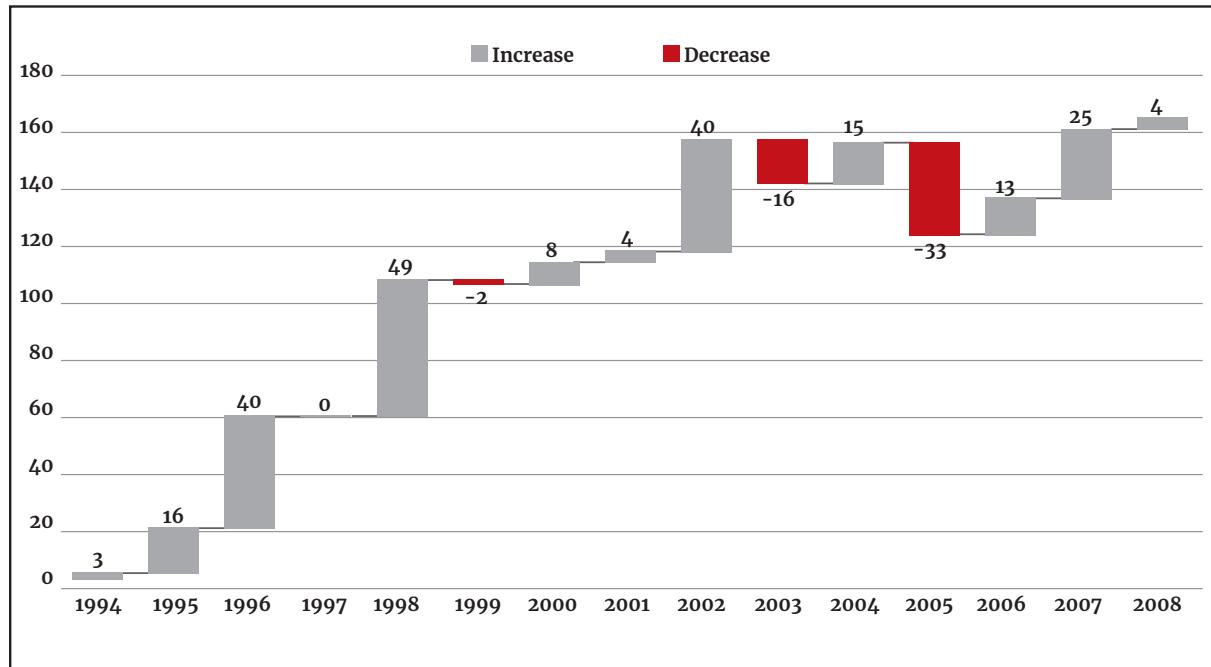
While describing the reasons for this trend is a bit like the blind men describing an elephant, a 2019 audit by the DOJ’s Inspector General’s Office (“Audit Report”) suggests the main culprit is processing delays.⁶⁴ According to the Audit Report, staffing shortages; errors or omissions; requests for additional information;

time spent translating documents; obtaining waivers of inadmissibility; and pending approvals from the requisite USAO are chiefly to blame.⁶⁵ Indeed, even small problems can lead an application to languish for years. One sponsoring agent reported having waited eight years for an application to be approved; another sponsoring agent reported that the approval time had “gone down” to seven years from ten; and a third sponsoring agent reported the quickest approval he had seen was five years. Consistent with these anecdotes, the Audit Report describes a general perception among LEAs that pursuing an S visa “was too difficult and lengthy, and not worth the effort.”⁶⁶ In one case, an agent bucked the entreaties of his colleagues and decided to sponsor an informant — that application has been pending for so long that the informant seems “less cooperative” in providing assistance with the investigation.⁶⁷

One sponsoring agent reported having waited eight years for an application to be approved.

The data reinforces the Audit Report’s findings. As Chart 2 illustrates, the OEO has experienced a backlog dating back to the beginning of the S visa program; this backlog continued to grow even as the number of applications the OEO received diminished.

Chart 2.
OEO Backlog, FY1994 — FY2008

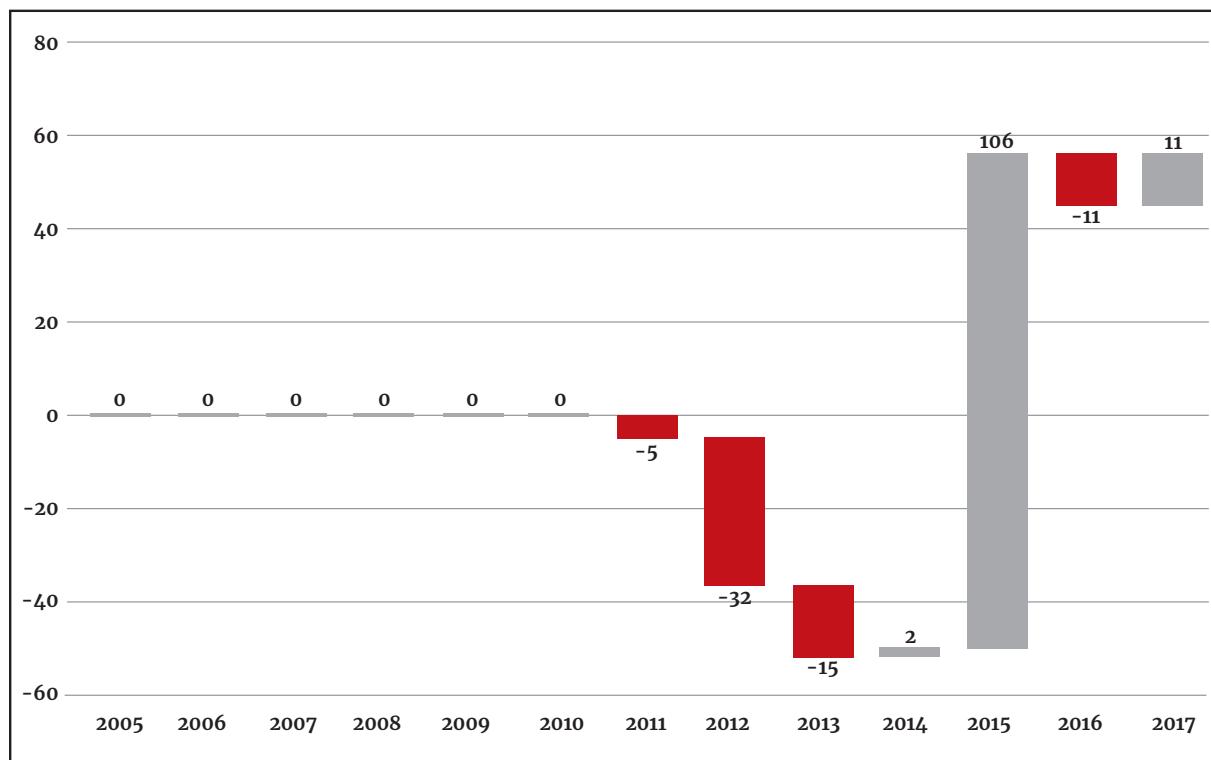


The USCIS has similarly been plagued by processing delays. As Chart 3 indicates, the agency appears to have processed an equal number of applications it received for FYs 2005–2010. Standing alone this might suggest that there is no backlog, but data obtained for FYs 2011–2013 militates against that possibility,

as the USCIS reportedly processed more applications than it received. To explain this discrepancy, one might argue that the data is inaccurate (as this Report explains, such inaccuracies are a systemic issue); another explanation — though not necessarily exclusive of the former one — is that the USCIS did, in fact, have a backlog of applications that was addressed in those years.

Chart 3.

Annual Backlog of S Visa Applications, USCIS, FY2005 — FY2018



In any case, the data suggests that the USCIS backlog is more likely due to temporary staffing shortages or long-standing (and uncorrected) deficiencies in a subset of applications, as opposed to what evidently appears to be more systemic deficiencies at the OEO. That said, the USCIS should not take more credit than is due: between FYs 2011 and 2017, 82 applications were withdrawn from consideration (see Appendix B).

So long as a foreign informant is willing (and able) to wait for years as their application makes its way through the bureaucratic morass, the toughest hurdle may be convincing a LEA to sponsor the application in the first instance.

While processing delays appear to be a hallmark feature of the S visa program, the data suggests that nearly all applications are eventually approved. For FYs 1994–2009, the OEO approved 1,012 of the 1,174 applications it received — an approval rate of approximately 86 percent (see Appendix D). Meanwhile, for FYs 2005–2018, the USCIS denied only two applications. Thus, so long as a foreign informant is willing (and able) to wait for years as their application makes its way through the bureaucratic morass, the toughest hurdle may be convincing a LEA to sponsor the application in the first instance.

Finally, the data indicates that S visa recipients are by and large highly productive cooperators.⁶⁸ For FYs for which data is available, their cooperation led, on average, to the convictions of 211 defendants during the FY their visa was issued. One explanation is that the grant of S visas are tied to large-scale investigations involving many potential defendants at multiple levels of an organization.

Table 4.

Figures by Close of Fiscal Year, FY1995 — FY2004 and FY2012 — FY2018

FY	S-5 and S-6 Visas Issued	Successful Prosecutions	Defendants Convicted	Successful Investigations	Targets of Successful Investigations
1995	59	217	359	15	91
1996	98	62	214	58	173
1997	35	36	72	3	20
1998	56	153	240	48	124
1999	50	124	181	50	121
2000	21	89	132	46	186
2001	105	n/a	n/a	n/a	n/a
2002	43	191	225	84	263
2003	30	114	200	71	159
2004	44	340	272	n/a	n/a
2012	60	417	n/a	294	n/a
2013	27	148	n/a	74	n/a
2014	28	78	n/a	57	n/a
2015	26	92	n/a	96	n/a
2016	45	124	n/a	127	n/a
2018	17	39	n/a	45	n/a

S visa recipients similarly provide substantial “continued benefits” to LEAs in the years after being awarded their visa. As shown in Table 5, from the inception of the S visa program through 2004, the cooperation of S visa holders resulted in 1,237 additional convictions (*i.e.*, convictions obtained subsequent to being awarded an S visa).

Table 5.
S Visa Continued Benefits, FY1996 — FY2004

FY	Successful Prosecutions	Defendants Convicted	Successful Investigations	Targets of Successful Investigations
1996	217	359	15	91
1997	340	628	81	350
1998	n/a	n/a	n/a	n/a
1999	32	20	32	103
2000	89	185	61	40
2001	2	3	14	50
2002	12	10	7	78
2003	33	28	8	67
2004	7	4	n/a	n/a
TOTAL	732	1237	218	779

RECOMMENDATIONS

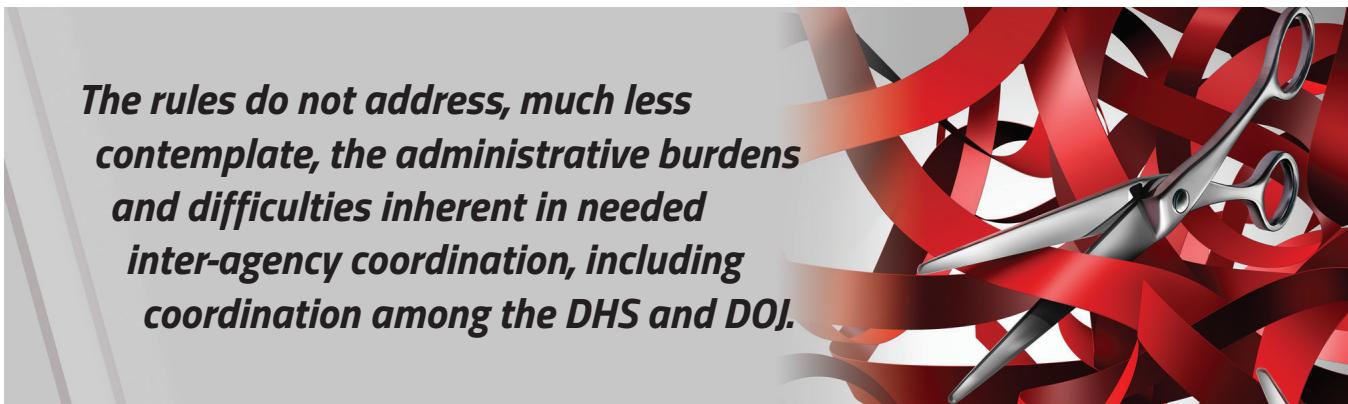
NACDL proposes that certain changes to the S visa program will reduce unnecessary and harmful roadblocks, and more closely align the program's outcomes with Congress's intent in establishing it.

Simplify the application process by shifting the focus away from layered oversight.

Streamlining the application process is essential to curing the S visa program's defects. To achieve this goal, a sensible place to start is by rewriting the rules and regulations to reflect the establishment of the DHS and its responsibility to confer immigration statuses, and clearly set forth the agency's authority throughout the application process.

The present system attempts to fit a square peg in a round hole. Prior to establishment of the DHS, the authority to interpret, implement, enforce, and adjudicate immigration law lay almost exclusively with the INS, then a component agency of the DOJ. This top-to-bottom approach, combined with the fact that LEAs such as the FBI, DEA, ATF and USMS operate under the jurisdiction of the DOJ, provided for strict control over the administration of the S visa. That changed when, upon passage of the Homeland Security Act of 2002, the INS was abolished, and its functions were transferred to the newly established DHS. But while significant discretionary authority over the nation's immigration laws was ceded to the DHS (a sprawling bureaucracy with a mission and policy objectives distinct from those of the DOJ), the rules that govern the S visa program were never changed to reflect the establishment of this entirely new agency. Meanwhile, the DOJ retains significant involvement in the S visa approval process for various reasons, including the fact that most applications are submitted by LEAs that fall under the purview of the DOJ. As such, the rules do not address, much less contemplate, the administrative burdens and difficulties inherent in needed inter-agency coordination, including coordination among the DHS and DOJ. Worse still, the advent of inter-agency red tape is precisely what the rules intended to avoid — that is, the rules clearly seek to *limit* INS's discretionary authority in the decision-making process.⁶⁹

The rules do not address, much less contemplate, the administrative burdens and difficulties inherent in needed inter-agency coordination, including coordination among the DHS and DOJ.



It is for this same reason that NACDL proposes to eliminate ICE-HSI’s discretionary authority in the application process. While the directorate’s mission may advance an important and legitimate interest, its role in adjudicating S visa requests is at best duplicative. For example, in cases where ICE-HSI is the sponsoring LEA, why is it necessary to obtain the same certifications once again? In cases where ICE-HSI is not the sponsoring agency, it will invariably have little or no knowledge of the underlying investigation and, as a corollary, will have less insight into an informant’s “value” as a cooperator. Potential drawbacks abound, including the risk of deprioritization in favor of informants the LEA *itself* has decided to sponsor. Eliminating a layer of bureaucratic oversight would serve the interests of both the federal government and potential informants: the more quickly applicants secure S status, the less likely they are to become jaded by the process and less willing to cooperate. In all, because ICE-HSI adds little value and more delay to the application process, it undermines the S visa program’s efforts to incentivize cooperation with a powerful, tangible immigration benefit.

Eliminating a layer of bureaucratic oversight would serve the interests of both the federal government and potential informants.



Amend the application procedure to provide for simultaneous review by the OEO and USCIS.

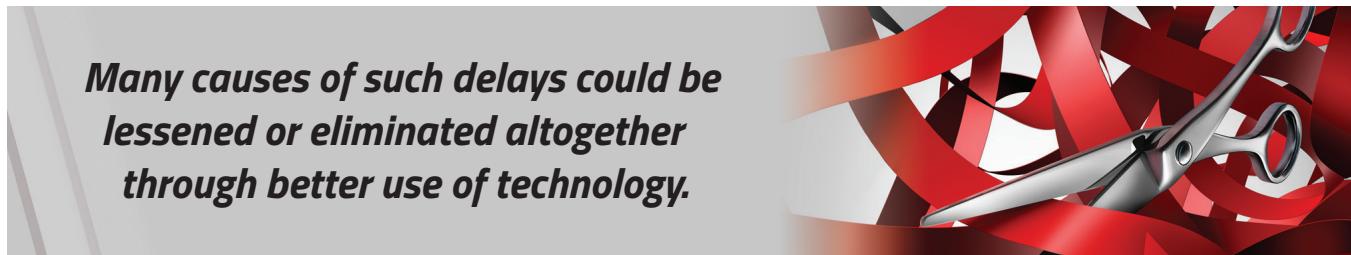
Although NACDL understands the need for complete and coordinated review by all agencies concerned, the current application process requires far too much time before a “yes” or “no” answer can be provided. Some method should be developed, or existing methods should be refined, to allow for the OEO and USCIS to conduct their respective reviews simultaneously. Importantly, the factors that inform the OEO and USCIS’s review are mutually exclusive. The OEO must consider the negative and favorable factors warranting an exercise of discretion on the individual’s behalf.⁷⁰ The USCIS, for its part, is charged with evaluating the grounds of inadmissibility that apply to the witness and whether a waiver of inadmissibility should be granted.⁷¹ Indeed, the USCIS is expressly prohibited from inquiring about the foreign national’s “role” in cooperating with the sponsoring LEA, including “the type of criminal activity” for which the foreign national is an informant or witness and “any specific information about the case” in which the foreign national may be involved.⁷²

To be sure, a determination by the USCIS to grant a waiver of inadmissibility is based, in part, on a recommendation of the Assistant Attorney General, Criminal Division, to grant such a waiver. But because the USCIS has exclusive authority to access a foreign national’s A-file (which likely contains more factors of inadmissibility not known to the DOJ or sponsoring LEA), the Assistant Attorney General’s recommendation will at times be informed by incomplete information. This change should not be controversial, as even the DOJ acknowledges that simultaneous review would likely reduce administrative delays.⁷³

Improve inter-agency coordination and tracking by establishing a centralized case management system.

If processing delays are due to a lack of coordination between agencies with a stake in the process, a sensible measure is to focus on developing a centralized information and communication technology system. The reasons for systemic delay in the S visa program are manifold. But many causes of such delays could be lessened or eliminated altogether through better use of technology. For instance, the DOJ's Inspector General describes a "troubling lack of transparency" in the application process due to the absence of any formal mechanism for tracking, making consistent, or ensuring the quality of interagency communications.⁷⁴ In fact, the present means of coordination between agencies and the systems used to track S visa information are so poor that, during the preparation of the Audit Report, the Inspector General was unable to conduct a "reliable analysis" of the program as a whole.⁷⁵ With respect to the government's ability to monitor S visa recipients' whereabouts and activities, its systems were so poor that the Inspector General was unable even to "identify the complete universe" of foreign nationals who federal LEAs were obligated to monitor.⁷⁶ Aside from making it easier to track applications and resolve issues with sponsorship as they arise, a centralized system of information sharing and coordination across the various agencies would provide a basic, but critical, means to monitor S visa recipients.

Many causes of such delays could be lessened or eliminated altogether through better use of technology.



CONCLUSION

Congress created the S visa with two important goals in mind: to incentivize and sufficiently protect foreign informants and to strengthen law enforcement, particularly in its fight against terrorism. But the government's administration of this visa has utterly failed to accomplish its aims. It has ignored the line between extensive, but sufficient rules and regulations and needless red tape. Not surprisingly, LEAs are reluctant to sponsor its foreign informants. Meanwhile, these same LEAs continue to dangle the possibility that foreign informants may one day receive an S visa, and due to the harsh immigration consequences flowing from most criminal convictions, the prospect of obtaining one will continue to be a key incentive for foreign nationals to cooperate. S visas thus give LEAs the opportunity to exploit this desire in exchange for nothing but empty promises.

NACDL submits that a more efficient approach would aid LEAs in administering the visa closer to the program's legislative intent. Rather than merely serve as tempting bait to recruit foreign informants, the S visa presents an opportunity to assist LEAs while *also* protecting foreign nationals (including longstanding LPRs), ultimately developing a more flexible and nuanced understanding of immigration and citizenship. Congress and the various agencies involved in the decision-making process must act to conform the administration of the S visa program with its stated intent.

ENDNOTES

1. Ann C. Rowland, *Effective Use of Informants and Accomplice Witnesses*, 50 S.C. L. REV. 679, 697 (1999).
2. 147 CONG. REC. H5699 (Sept. 14, 2001)(statement of Rep. Lee).
3. 61 Fed. Reg. 1837 (Jan. 24, 1996).
4. The Immigration and Naturalization Service (“INS”) was the DOJ agency that, prior to 2003, served as the primary agency responsible for overseeing the immigration and naturalization processes. As a result of the Homeland Security Act of 2002 (Pub. L. No. 107–296, 116 Stat. 213), INS was disbanded in 2003, and its functions were delegated to three newly established agencies: the United States Citizenship and Immigration Services (“USCIS”), Immigration and Customs Enforcement (“ICE”), and Customs and Border Patrol.
5. *Federal Witness Security Program and Protection of Foreign Nationals: Hearing Before the House Subcomm. on Government Information, Justice, and Agriculture*, 101st Cong. 1, 49 (1990) (statement of Donald Bierman) (describing hardships endured by foreign nationals as a result of their lack of immigrant status).
6. 145 CONG. REC. H10776 (Oct. 26, 1999) (statement of Rep. Lee) (noting that the S visa is “necessary because many of these people are in danger in their home countries after they have cooperated”).
7. *See Terrorist Defectors: Are We Ready?: Hearing Before the Comm. on Governmental Affairs*, 102d Cong. 7 (1992) [hereinafter “Terrorist Defectors”] (statement of Sen. Lieberman).
8. Douglas Pasternak, *Squeezing Them, Leaving Them; Some Defectors Say Washington Isn’t Always Good About Keeping Its Word*, U.S. NEWS & WORLD REPORT, July 8, 2002.
9. *Terrorist Defectors*, *supra* n.7, at 33.
10. *Id.* at 28–29 (statement of FBI Chief of Counter-Terrorism Neil J. Gallagher).
11. 145 CONG. REC. H10775–76 (daily ed. Oct. 26, 1999) (statement of Rep. Lee).
12. *See S. 1424*, 107th Cong. (2001) (enacted).
13. 147 CONG. REC. S9406 (daily ed. Sept. 13, 2001) (statement of Sen. Leahy).
14. 147 CONG. REC. H5698 (daily ed. Sept. 14, 2001) (statement of Rep. Gekas).
15. Press Release, U.S. Dep’t of Justice, *Attorney General Ashcroft Announces Responsible Cooperators Program* (Nov. 29, 2001), https://www.justice.gov/archive/ag/speeches/2001/agcrisisremarks11_29.htm.
16. David Stout, *U.S. Citizenship May Be Reward in Terror War, Ashcroft Says*, N.Y. TIMES, Nov. 29, 2001, at <https://www.nytimes.com/2001/11/29/politics/us-citizenship-may-be-reward-in-terror-war-ashcroft-says.html>.
17. *DOJ Oversight: Preserving Our Freedoms While Defending Against Terrorism: Hearing Before the S. Comm. on the Judiciary*, 107th Cong. (2001) (statement of Viet D. Dinh).
18. 8 C.F.R. § 214.2(t)(1).
19. *Id.* § 214.2(t)(2). Only a federal LEA may request S-6 nonimmigrant classification, although either a state or federal LEA may request S-5 nonimmigrant classification.
20. *See* 8 U.S.C. § 1184(k)(3).
21. *See id.* §1184(k)(1).

22. Withholding of removal provides that a deportable noncitizen may avoid removal if she can show that it is more likely than not that her life or freedom will be threatened if she is removed to a particular country. *See id.* § 1231(b)(3)(A).
23. 8 C.F.R. § 2142(t)(7).
24. OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF JUST., *AUDIT OF THE DEPARTMENT OF JUSTICE'S USE OF IMMIGRATION SPONSORSHIP PROGRAMS* (JUNE 2019).
25. Form I-854A is used to apply for nonimmigrant status; Form I-854B is used to apply for adjustment to permanent status. These forms, together with the accompanying instructions, provide an overview of the application process and are available as an appendix to this Report.
26. 8 U.S.C. § 212(a).
27. 8 C.F.R. § 214.2(t)(4)(i)(B).
28. Mary Healy, *Office of Enforcement Operations' Policy and Statutory Enforcement Unit*, 55 U.S. ATT'YS BULL. 15, 21 (2007).
29. Audit Report at 22; *see also* 8 CFR § 214.2(t)(4)(ii)(A).
30. *Id.* § 214.2(t)(4)(ii)(B).
31. *See id.* § 214.2(t)(4)(ii)(D).
32. Audit Report at 22; DHS, PRIVACY IMPACT ASSESSMENT FOR THE ICE PAROLE AND LAW ENFORCEMENT PROGRAMS UNIT CASE MANAGEMENT SYSTEMS (2018).
33. An Alien File, or “A-File,” are records maintained by USCIS of a foreign national as he or she passes through the immigration and inspection process, or is the subject of a law enforcement action against or involving him or her.
34. Although the ground referring to Nazis is dated in its scope (and genocide is also rare in the context of S applications), the exclusion of persons who have participated in extra-judicial killing or any act of torture actually has potentially broad effect over possible S applicants. Healy, *supra* n.1, *at n.26*.
35. 8 U.S.C. § 214.2(t)(5)(iii).
36. *Id.*
37. 8 U.S.C. § 12550.
38. *See* 8 C.F.R. §§ 245.11(a)(2)-(4). This same process applies to cases where a sponsoring LEA seeks adjustment of status for an informant’s family members.
39. *See id.* § 245.11(f).
40. *See* 8 U.S.C. § 1151.
41. 8 U.S.C. § 1153(b).
42. Christina M. Ceballos, Comment, *Adjustment of Status for Alien Material Witnesses: Is It Coming Three Years Too Late?*, 54 U. MIAMI L. REV. 75, 84–85 (1999).
43. 60 Fed. Reg. 44,261 (1995).
44. Nora V. Demleitner, *Immigration Threats and Rewards: Effective Law Enforcement Tools in the “War” on Terrorism*, 51 EMORY L.J. 1059, 1074 (2002).
45. *Id.* at 1060.

46. Cora Currier, *Revealed: The FBI’s Secret Methods for Recruiting Informants at the Border*, THE INTERCEPT (Oct. 5, 2016) (describing internal FBI documents instructing agents to use an “immigration relief dangle” when attempting to recruit informants).
47. Andrew Becker, *Retired Drug Informant Says He Was Burned*, NPR (Feb. 13, 2010).
48. *Transportation Security Challenges Post-9/11 Before the S. Comm. on Commerce, Science and Transportation*, 111th Cong. (2009).
49. *Id.*
50. Maria Sacchetti, *ICE says they arrested a human-rights violator. Retired federal agents call him a hero.*, WASH. POST (May 31, 2017).
51. Demleitner, *Immigration Threats and Rewards: Effective Law Enforcement Tools in the “War” on Terrorism*, *supra* n.42, at 1060.
52. The author of this Report was retained by Mr. Coronado *pro bono* beginning in 2017.
53. *Nervin Coronado v. United States*, No. 17-CV-02579 (ARR), Gov’t Resp. to Pet’s Mtn., ECF No. 5, at 9 (E.D.N.Y. Jun. 28, 2017).
54. *See id.*
55. *See id.*
56. *Id.* The court went on to deny Coronado’s motion as beyond the scope of a Motion for Reconsideration under Fed. R. Civ. P. 60(b). *See id.* ECF No. 20.
57. OFFICE OF THE U.S. ATT’YS, U.S. DEP’T OF JUSTICE, U.S. ATTORNEYS’ MANUAL § 1862 (2011).
58. All data used in the Charts and Tables contained in this Report are drawn from one or more of the following sources: (i) data obtained from the U.S. Citizenship and Immigration Services in response to Freedom of Information Act requests; and (ii) data contained in annual reports transmitted to Congress by the DOJ, as required by 8 U.S.C. § 1184 (j)(5) (“DOJ Reports”). “N/a” indicates data that was unavailable at the time of publication but may have since become available. It is important to note that there are discrepancies in the S visa data between sources within the DOJ and at DHS. As discussed in this Report, these discrepancies are largely due to the fact that the various DOJ component agencies, in addition to DHS, are responsible for tracking the data to the best of their abilities. But because no single agency or sub-agency has a complete window into the data, and because there is no centralized tracking system that reaches across all relevant agencies and sub-agencies, any attempt to reconcile the data will result in some degree of incongruity. Thus, the source of the data corresponding to each chart and table is reflected in the corresponding endnote, and where the data among the DOJ and DHS are in conflict, this Report has chosen to include the data reported in the DOJ Reports. The source of the data contained in Chart 1 are the DOJ Reports, with the exception of the data for Fiscal Years 2005–2011 and 2017. The source of the data for those years is USCIS.
59. Emily Stabile, *Recruiting Terrorism Informants: The Problems with Immigration Incentives and the S-6 Visa*, 102 CALIF. L. REV. 235, 270 (2014).
60. *Id.*
61. Letter from the U.S. Dep’t of Justice to President George W. Bush (Sept. 20, 2001), at <https://www.georgewbushlibrary.smu.edu/en/Digital-Library---2/-/-/media/DB5A2E9BD3D04C9B94A9AF1188D4551E.ashx>
62. OFFICE OF THE U.S. ATT’YS, U.S. DEP’T OF JUSTICE, JUSTICE MANUAL § 9-72.110.
63. *See Audit Report at 18.*
64. *Id.*

65. *Id.*

66. *Id.*

67. *Id. at 25.*

68. 8 U.S.C. § 1184(k)(4). These reports require, in part, that DOJ provide information relating to (a) the number of successful criminal prosecutions or investigations resulting from the cooperation of such noncitizens; (b) the number of terrorist acts prevented or frustrated resulting from the cooperation of such noncitizens; and (c) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act.

69. See 60 Fed. Reg. 44,260 (1995) (“A central concern of the comments offered by interested LEAs during the Service’s drafting process was, given the limited number of available S nonimmigrant visas specified under the statute, how requests for this classification will be evaluated. The regulation provides that the Criminal Division of the [DOJ] will establish appropriate procedures for receiving and reviewing Form I–854 and determining which applications will be forwarded to the Commissioner with a recommendation for approval.”).

70. 8 C.F.R. § 214.2(t)(4)(ii)(A).

71. See U.S. CITIZENSHIP & IMMIGRATION SERVS., *POLICY MANUAL*, S NONIMMIGRANT VISA CATEGORY, U. (Apr. 24, 2020).

72. *Id.*

73. Audit Report at 38.

74. *Id. at 24* (internal quotations omitted).

75. *Id. at 23.*

76. *Id. at 26.*

APPENDIX A

Reports prepared by the Department of Justice for the Committees on the Judiciary of the House of Representatives and the Senate, as required by 8 USC § 1184 (k)(4).

For original size page pdf of Appendix A, visit www.NACDL.org/SVisaReport

CONTENTS

FY 1995	1 (page 37)
FY 1996	6 (page 38)
FY 1997	14 (page 40)
FY 1998	21 (page 42)
FY 1999	29 (page 44)
FY 2000	36 (page 45)
FY 2001	44 (page 47)
FY 2002	52 (page 49)
FY 2003	57 (page 51)
FY 2004	62 (page 52)
FY 2012	66 (page 53)
FY 2013	68 (page 53)
FY 2014	72 (page 54)
FY 2015	76 (page 55)
FY 2016	80 (page 56)
FY 2018	84 (page 57)



1995

U. S. Department of Justice
Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

1995

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by § U.S.C. § 1184(j)(5), concerning alien witnesses or informants who have been admitted to nonimmigrant status pursuant to Section 101(a)(15)(S) of the Immigration and Nationality Act (the Act), § U.S.C. § 1101(a)(15)(S) (1995). This is the first such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service.

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or state law enforcement authorities or to a Federal or state court. § 1101(a)(15)(S)(i)¹. The Attorney General must also determine that the alien's presence in the

¹ The S(i) nonimmigrant classification has been designated as S-5 under the implementing regulation. Entry of Aliens Needed as Witnesses and Informants; Nonimmigrant S Classification, 60 Fed. Reg. 44260 (1995) (to be codified at 8 C.F.R. § 212.14(t)(1)).

JCK:EDH:ST:BN:SV Typed: 3/8/96 CTS #960003505

Records/Keeney/CRM Exec Sec/Hess/T/Kach/Weintraub/Voreas/S-Visa Files

FY 1995 | p. 1

1995

The Honorable Henry J. Hyde
Page 2

United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or enterprise. Id. The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 100. § U.S.C. § 1184(j)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or association, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. § 1101(a)(15)(S)(ii)². The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under Section 36(a) of the State Department Basic Authorities Act of 1956. Id. The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 25. § U.S.C. § 1184(j)(1).

The Act also provides for nonimmigrant visas for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants, including spouses, married and unmarried sons and daughters, and parents. § U.S.C. § 1101(a)(15)(S).³

The Act requires that the Attorney General determine whether a ground for exclusion exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for exclusion if the Attorney General considers it is in the national interest to do so. § U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an S(i) nonimmigrant to that of an alien lawfully admitted for permanent residence if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. § U.S.C. § 1255(i)(1). Similarly, the Attorney

² The nonimmigrant classification S(ii) has been designated as S-6 under the implementing regulation. 60 Fed. Reg. 44260 (to be codified at 8 C.F.R. § 214.2(t)(2)).

³ The nonimmigrant classification for eligible family members of S(i) and S(ii) category nonimmigrants has been designated S-7 under the implementing regulation. 60 Fed. Reg. 44260 (to be codified at 8 C.F.R. § 214.2(t)(3)).

FY 1995 | p. 2

The Honorable Henry J. Hyde
Page 3

General may adjust the status of an S(ii) nonimmigrant to that of an alien lawfully admitted for permanent residence, if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an individual involved in such an act of terrorism, and the nonimmigrant has received a reward under Section 36(a) of the State Department Basic Authorities Act of 1956. § U.S.C. § 1255(i)(2).

An alien witness or informant admitted as either an S(i) or S(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of deportation, any action of deportation instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation or restriction imposed by the Attorney General. § U.S.C. § 1184(j)(4).

The Attorney General is required by § U.S.C. § 1184(j)(5) to make an annual report to Congress regarding the granting of S visa classifications. Specifically, the Act requires that:

- (5) (t)he Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and

The Honorable Henry J. Hyde
Page 4

(E) the number of such nonimmigrants who have failed to report quarterly (as required under the Act) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

18 U.S.C. § 1184(j)(5).

Responsibility for compiling this report has been delegated to the Assistant Attorney General, Criminal Division, in consultation with the Commissioner of the Immigration and Naturalization Service. 60 Fed. Reg. 44260, 44268 (to be codified at 8 C.F.R. § 214.2(t)(8)).

Annual Report for Fiscal Year 1995

In accordance with these statutory reporting requirements, the following information is submitted regarding the issuance of S visa classifications during fiscal year 1995:

- (A) In fiscal year 1995, 59 witnesses or informants and 77 family members were granted S classification nonimmigrant status. Of these, 54 alien witnesses and informants were classified as S(i) nonimmigrants, along with 71 family members who obtained derivative S status. Additionally, five alien witnesses and informants were classified as S(ii) category nonimmigrants, together with six family members who obtained derivative S status.⁴
- (B) The cooperation of 36 such aliens resulted in successful criminal prosecutions. The cooperation of the remaining 23 aliens contributed to successful investigations.
- (C) No terrorist acts are known to have been prevented or frustrated by the cooperation of the above noted aliens.
- (D) No witnesses or informants were admitted whose cooperation failed to result in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act.

⁴ The time available for processing applications for S visa classification in fiscal year 1995 was limited to the period between the promulgation of implementing regulations (August 25, 1995) and the end of the fiscal year (September 30, 1995).

FY 1995 | p. 4

The Honorable Henry J. Hyde
Page 5

- (E) None of the above-noted S classification nonimmigrants failed to report quarterly, as required under the Act, or were convicted of crimes in the United States between the date of their admission as such a non-immigrant and the end of the fiscal year.³

Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

John C. Keeney
Acting Assistant Attorney General

³ The aliens approved for S visa classification in fiscal year 1995 were all approved during the last week of the fiscal year.

FY 1995 | p. 5

Honorable Orrin G. Hatch
Page 2

United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or enterprise. *Id.* The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 200. 8 U.S.C. § 1184(k)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii)². The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under Section 36(a) of the State Department Basic Authorities Act of 1956. *Id.* The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 50. 8 U.S.C. § 1184(k)(1).

The Act also provides for nonimmigrant visas for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants, including spouses, married and unmarried children and parents. 8 U.S.C. § 1101(a)(15)(S).³

The Act requires that the Attorney General determine whether a ground for inadmissibility exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for inadmissibility if the Attorney General considers that it is in the national interest to do so. 8 U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an S(i) nonimmigrant to that of an alien lawfully admitted for permanent residence, if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. 8 U.S.C. § 1255(i)(1). Similarly, the Attorney

² The nonimmigrant classification S(ii) has been designated as S-6 under the implementing regulation. 8 C.F.R. § 214.2(t)(2).

³ The nonimmigrant classification for eligible family members of S(i) and S(ii) category nonimmigrants has been designated S-7 under the implementing regulation. 8 C.F.R. § 214.2(t)(3).

FY 1996 | p. 7

1996

U. S. Department of Justice
Criminal Division

JCK:FDH:MHK:SJT:BW:SV:bjp
Typed: 8/14/97

Office of the Assistant Attorney General

CTS: 970007455
Washington, D.C. 20530

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the United States Senate, as required by 8 U.S.C. § 1184(k)(5), concerning alien witnesses or informants who have been admitted to nonimmigrant status pursuant to Section 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S)(1995). This is the second such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service.

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or state law enforcement authorities or to a Federal or state court. 8 U.S.C. § 1101(a)(15)(S)(i). The Attorney General must also determine that the alien's presence in the

RECORDS
CHRON
KEENEY
LESSON
ILLION
"KACH
WEINTRAUB
OREAS

¹ The S(i) nonimmigrant classification has been designated as S-5 under the implementing regulation. Nonimmigrant Classes; Alien Witnesses and Informants, 8 C.F.R. § 214.2(t)(1) (1997).

FY 1996 | p. 6

Honorable Orrin G. Hatch
Page 3

General may adjust the status of an S(ii) nonimmigrant to that of an alien lawfully admitted for permanent residence, if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an individual involved in such an act of terrorism, and the nonimmigrant has received a reward under Section 36(a) of the State Department Basic Authorities Act of 1956. 8 U.S.C. § 1255(i)(2).

An alien witness or informant admitted as either an S(i) or S(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of deportation, any action of deportation instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation or restriction imposed by the Attorney General. 8 U.S.C. § 1184(k)(4).

Reporting Requirement

The Attorney General is required by 8 U.S.C. § 1184(k)(5) to make an annual report to Congress regarding the granting of S visa classifications. Specifically, the Act requires that:

- (5) [t]he Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under the Act) or who have been convicted of crimes in the United

FY 1996 | p. 8

Honorable Orrin G. Hatch
Page 4

States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(5).

Responsibility for compiling this report has been delegated to the Assistant Attorney General, Criminal Division, in consultation with the Commissioner of the Immigration and Naturalization Service. 8 C.F.R. § 214.2(t)(8).

Annual Report for Fiscal Year 1996

In accordance with the statutory reporting requirements, this report addresses the issuance of S visa classifications during fiscal year 1996. Information is also provided for individuals issued S visa classifications during fiscal year 1995 because all S category nonimmigrants remain under Law Enforcement Agency (LEA) supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in nonimmigrant status. The following results are derived from data submitted to the Criminal Division in the form of annual reports from the supervising LEAs for each alien in S category nonimmigrant status.⁴

Reporting Results

- (A) (1) In fiscal year 1996, 98 witnesses or informants and 21 family members were granted S classification. All of these individuals were classified as S(ii) nonimmigrants.⁵
- (2) In fiscal year 1995, 59 witnesses or informants and 77 family members were granted S nonimmigrant classification. Of these, 54 alien witnesses and informants were classified as S(ii) nonimmigrants, along with 71 family members who obtained derivative S status. Additionally, five alien witnesses and informants

⁴Fiscal year 1995 was unique in that all S classifications awarded for that year were based on applications submitted within six weeks of the end of the fiscal year. The fiscal year 1995 annual report was, therefore, based on conclusions which were drawn from information provided in each alien's initial S visa application.

⁵ One additional family member of an individual granted S(ii) nonimmigrant status in fiscal year 1995 was granted derivative S status in fiscal year 1996.

FY 1996 | p. 9

The Honorable Orrin G. Hatch
Page 5

were classified as S(ii) category nonimmigrants, together with six family members who obtained derivative S status.

(B) (1) The cooperation of 83 aliens granted S nonimmigrant classification in fiscal year 1996 resulted in 62 prosecutions and the conviction of 214 defendants. In addition, the cooperation of 12 of these aliens contributed to 59 successful investigations involving 173 targets.⁶ Six of these cooperating individuals provided information which resulted in both successful prosecutions and successful investigations.

(2) The cooperation of 45 aliens granted S nonimmigrant classification in fiscal year 1995 resulted in 217 prosecutions and the conviction of 359 defendants. In addition, the cooperation of 20 of these aliens contributed to 15 successful investigations involving 91 targets. Thirteen of these cooperating individuals provided information which resulted in both successful prosecutions and successful investigations.⁷

(C) (1) No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification in fiscal year 1996.

⁶The total number of successful prosecutions and investigations reported by LEAs was higher than indicated herein because LEAs reported the number of successful results from each witness or informant. This resulted in numerous instances of "double counting" of successful prosecutions and investigations, as well as defendants and targets. To correct for this, an alien's cooperation was only counted as having led to a successful prosecution or investigation in the event that no other alien's cooperation had yet caused that case or investigation to be counted. The same approach was used for counting defendants and targets.

⁷In the fiscal year 1995 Annual Report to Congress, 36 aliens were reported as having provided information which led to successful prosecutions, and 23 aliens were reported as having provided information which led to successful investigations. That information is correct. However, the number of successful prosecutions or investigations for each alien was not determined in that report. In this year's report, the LEAs were able to provide more accurate data from which to compile responses to these questions.

FY 1996 | p. 10

The Honorable Orrin G. Hatch
Page 6

- (2) No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification in fiscal year 1995.⁸
- (D) (1) No witnesses or informants granted S nonimmigrant classification in fiscal year 1996 were admitted whose cooperation failed to result in a successful criminal prosecution or investigation. The annual reports submitted for two aliens indicate that in 1996 the aliens' cooperation did not result in a successful prosecution or investigation. However, our records indicate that one alien had previously provided information leading to one conviction and a successful investigation in Colombia and a successful investigation in the United States. The other alien had previously provided information leading to nine federal convictions and one state conviction.
- (2) One LEA reported that a witness, currently incarcerated, who was granted S nonimmigrant classification in fiscal year 1995 failed to provide the cooperation which was the basis of his being granted S nonimmigrant status. No other witnesses or informants granted S nonimmigrant classification in fiscal year 1995 were admitted whose cooperation failed to result in a successful criminal prosecution or investigation. The annual reports submitted for two aliens granted S nonimmigrant classification in fiscal year 1995 indicate that the aliens' cooperation did not result in a successful prosecution or investigation. However, one of these aliens had previously provided information contributing to the conviction of 29 defendants. Information provided by the other alien assisted in a successful prosecution in the United States and a successful investigation involving United States law enforcement and leading to eight convictions in Germany.

⁸Supervising LEAs reported that two terrorist acts had been prevented or frustrated, however, further analysis revealed that while in both cases the alien provided significant testimony, neither incident actually involved the prevention or frustration of a terrorist act. In both instances, the alien's cooperation was one of the grounds upon which the alien was awarded S classification.

FY 1996 | p.11

The Honorable Orrin G. Hatch
Page 7

(E) (1) Two witnesses or informants granted S nonimmigrant classification in fiscal year 1996 failed to report quarterly as required during fiscal year 1996 because the aliens had not been informed of their S nonimmigrant classification in a sufficiently timely manner to enable reporting prior to the end of the fiscal year.⁹

(2) One witness or informant granted S nonimmigrant classification in fiscal year 1995 failed to report quarterly as required during fiscal year 1996 because the alien was not informed of his S nonimmigrant classification until the second quarter of this fiscal year. Also, one alien and his family members returned to their home country prior to being informed that they had been awarded S nonimmigrant classification. The supervising LEA considers this alien to be in good standing and plans to bring him back into the U.S. for an upcoming trial, at which time the alien plans to stay in the U.S. permanently. Additionally, six aliens failed to make any of the required quarterly reports. These six aliens are believed to have left the United States and the supervising LEAs are in the process of seeking termination of the S nonimmigrant classification for each of these individuals.

(F) (1) Of the aliens granted S nonimmigrant classification in fiscal year 1996, no nonimmigrants were convicted of crimes in the United States between the date of their admission as such a nonimmigrant and the end of the fiscal year.

⁹In their Annual Reports concerning each alien in S nonimmigrant classification, the supervising LEAs indicated whether the alien had made all of the required quarterly reports. These responses were verified by a careful review of all S-Visa files in the possession of the Criminal Division.

FY 1996 | p.12

The Honorable Orrin G. Hatch
Page 8

(F) (2) Of the aliens granted S nonimmigrant classification in fiscal year 1995, no nonimmigrants were convicted of crimes in the United States during fiscal year 1996.

Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

John C. Keeney
Acting Assistant Attorney General

FY 1996 | p. 13

The Honorable Henry J. Hyde

Page 2

enterprise. *Id.* The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 200. 8 U.S.C. § 1184(k)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii)². The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under Section 36(a) of the State Department Basic Authorities Act of 1956. *Id.* The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 50. 8 U.S.C. § 1184(k)(1).

The Act also provides for nonimmigrant visas for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants, including spouses, married and unmarried children and parents. 8 U.S.C. § 1101(a)(15)(S).³

The Act requires that the Attorney General determine whether a ground for inadmissibility exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for inadmissibility if the Attorney General considers that it is in the national interest to do so. 8 U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an S(i) nonimmigrant to that of an alien lawfully admitted for permanent residence, if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. 8 U.S.C. § 1255(i)(1). Similarly, the Attorney General may adjust the status of an S(ii) nonimmigrant to that of

² The nonimmigrant classification S(ii) has been designated as S-6 under the implementing regulation. 8 C.F.R. § 214.2(t)(2).

³ The nonimmigrant classification for eligible family members of S(i) and S(ii) category nonimmigrants has been designated S-7 under the implementing regulation. 8 C.F.R. § 214.2(t)(3).

FY 1997 | p. 15

1997

U.S. Department of Justice
Criminal Division

Assistant Attorney General

Washington, DC 20530-0001

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by 8 U.S.C. § 1184(k)(5), concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to §101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S)(1995). This report is for fiscal year 1997 and is the third such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service.

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to federal or state law enforcement authorities or to a Federal or state court. 8 U.S.C. § 1101(a)(15)(S)(i)¹. The Attorney General must also determine that the alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or

¹ The S(i) nonimmigrant classification has been designated as S-5 under the implementing regulation. Nonimmigrant Classes; Alien Witnesses and Informants, 8 C.F.R. § 214.2(t)(1)(1997).

FY 1997 | p. 14

3

The Honorable Henry J. Hyde

Page 3

an alien lawfully admitted for permanent residence, if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an individual involved in such an act of terrorism, and the nonimmigrant has received a reward under Section 36(a) of the State Department Basic Authorities Act of 1956. 8 U.S.C. § 1255(i)(2).

An alien witness or informant admitted as either an S(i) or S(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of deportation, any action of deportation instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation or restriction imposed by the Attorney General. 8 U.S.C. § 1184(k)(4).

By regulation, 8 C.F.R. Part 214, the Assistant Attorney General for the Criminal Division was given the authority to approve applications for S nonimmigrant status. This authority has now been delegated to the Principal Deputy Assistant Attorney General for the Criminal Division.

The Act contains a "sunset" provision which, in effect, prohibits any alien from being granted S category nonimmigrant status after September 12, 1999. See 8 U.S.C. § 1184(k)(2). Unless this provision is repealed or amended, the S nonimmigrant category will no longer be available to law enforcement agencies to use for those informants and witnesses who have provided substantial assistance to law enforcement. The information we have received from the Law Enforcement Agencies (LEAs) indicates that the availability of S category nonimmigrant status is an important law enforcement tool. In light of the value of this program to the law enforcement community, consideration is being given to appropriate legislative initiatives which would serve to repeal this "sunset" provision.

Reporting Requirement

The Attorney General is required by 8 U.S.C. § 1184(k)(5) to make an annual report to Congress regarding the granting of S visa classifications. Specifically, the Act requires that:

FY 1997 | p. 16

The Honorable Henry J. Hyde

Page 4

- (5) [t]he Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under the Act) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(5).

Responsibility for compiling this report has been delegated to the Assistant Attorney General, Criminal Division, in consultation with the Immigration and Naturalization Service. 8 C.F.R. § 214.2(t)(8).

Annual Report for Fiscal Year 1997

In accordance with the statutory reporting requirements, this report provides information for individuals granted S visa classification for fiscal year 1997. Information is also provided for individuals issued S visa classifications for fiscal years 1995 and 1996 because all S category nonimmigrants remain under LEA supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division in the form of annual reports from the supervising LEAs for each alien in S nonimmigrant status, and is supported by quarterly reports and other information regularly submitted by the supervising LEAs.

FY 1997 | p. 17

The Honorable Henry J. Hyde

Page 5

(A) The number of aliens granted S nonimmigrant classification

For fiscal year 1997, 35 witnesses or informants and 19 family members were granted S classification nonimmigrant status. All of these individuals were classified as S(i) nonimmigrants.

For fiscal year 1996, 98 witnesses or informants and 21 family members were granted S classification nonimmigrant status. All of these individuals were classified as S(ii) nonimmigrants.

For fiscal year 1995, 59 witnesses or informants and 77 family members were granted S nonimmigrant classification. Of these, 54 alien witnesses and informants were classified as S(i) nonimmigrants, along with 71 family members who obtained derivative S status. Additionally, five alien witnesses and informants were classified as S(ii) category nonimmigrants, together with six family members who obtained derivative S status.

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 1997, the cooperation of the aliens granted S nonimmigrant classification for fiscal year 1997 had resulted in 36 prosecutions and the conviction of 72 defendants.⁴ In addition, the cooperation of these aliens contributed to 3 successful investigations involving 20 targets.

As of the end of fiscal year 1997, the cooperation of the aliens granted S nonimmigrant classification for fiscal year 1996 had resulted in 106 prosecutions and the conviction of 325

⁴ The figures concerning the results of the aliens' cooperation provided in this report for fiscal years 1997, 1996 and 1995 are conservative and lower in many instances than the figures reported by the LEAs for two reasons. First, there were some instances of "double counting" of prosecutions, investigations, defendants and targets because the LEAs reported the number of successful results from each witness or informant. To correct for this, an alien's cooperation was only counted as having led to a successful prosecution or investigation in the event that no other alien's cooperation had yet caused that case or investigation to be counted. The same approach was used for counting defendants and targets. Also, the LEAs inadvertently submitted for certain aliens the same results for fiscal year 1997 that had previously been submitted in the annual reports for fiscal year 1996. We have made the appropriate adjustments in those cases.

FY 1997 | p. 18

The Honorable Henry J. Hyde

Page 6

defendants.⁵ In addition, the cooperation of these aliens contributed to 69 successful investigations involving 232 targets.

As of the end of fiscal year 1997, the cooperation of the aliens granted S nonimmigrant classification for fiscal year 1995 resulted in 234 prosecutions and the conviction of 413 defendants. In addition, the cooperation of these aliens contributed to 32 successful investigations involving 118 targets.

(C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification for fiscal years 1997, 1996 or 1995. However, a number of the alien granted S nonimmigrant status were involved in the investigation or prosecution of cases involving terrorism.

(D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

There were no aliens granted S nonimmigrant status for 1997 whose cooperation did not result in a successful prosecution or investigation.

(E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 1997, of all aliens granted S nonimmigrant status by the end of the period covered by this report, 12 aliens failed to report every quarter as required.

⁵ The figures we are reporting regarding the results of the cooperation of aliens granted S nonimmigrant classification for fiscal years 1996 and 1995 are higher than the figures we have reported to you in previous annual reports. The figures are higher because the cooperation of these aliens has continued to contribute to prosecutions, convictions, investigations and the identification of targets.

FY 1997 | p. 19

The Honorable Henry J. Hyde

Page 7

None of the aliens granted S nonimmigrant classification for fiscal years 1997 and 1996 was convicted of a crime during fiscal year 1997. Of the aliens granted S nonimmigrant classification for fiscal year 1995, one was convicted on a misdemeanor criminal traffic charge, and another was convicted on two criminal misdemeanor charges during fiscal year 1997.

Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

James K. Robinson
Assistant Attorney General

FY 1997 | p. 20

For original size page pdf of Appendix A, visit www.NACDL.org/SVisaReport

Image Not Available

1998

U.S. Department of Justice
Criminal Division

Office of the Deputy Assistant Attorney General

Washington, DC 20530-0001

The Honorable Orrin Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by 8 U.S.C. § 1184(k)(5), concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to § 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S). This report is for fiscal year 1998 and is the fourth such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service (INS).

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or State law enforcement authorities or to a Federal or State court. 8 U.S.C. § 1101(a)(15)(S)(i). The Attorney General must also determine that the alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or enterprise. *Id.* The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 200. 8 U.S.C. § 1184(k)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the

FY 1998 | p. 21

4

The Honorable Orrin Hatch

Page 2

Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii). The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under 22 U.S.C. § 2708(a). *Id.* The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 50. 8 U.S.C. § 1184(k)(1).

The Act also provides for derivative nonimmigrant classification for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants. This derivative status is limited to spouses, married and unmarried children, and parents. 8 U.S.C. § 1101(a)(15)(S).

The Act requires that the Attorney General determine whether a ground for inadmissibility exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for inadmissibility if the Attorney General considers that it is in the national interest to do so. 8 U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an (S)(i) nonimmigrant to that of an alien lawfully admitted for permanent residence if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. 8 U.S.C. § 1255(j)(1). Similarly, the Attorney General may adjust the status of an (S)(ii) nonimmigrant to that of an alien lawfully admitted for permanent residence if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an individual involved in such an act of terrorism, and the nonimmigrant has received a reward under 22 U.S.C. § 2708(a). 8 U.S.C. § 1255(j)(2).

An alien witness or informant admitted as either an (S)(i) or (S)(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by

FY 1998 | p. 22

The Honorable Orrin Hatch

Page 3

one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of removal, any action for removal instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation, or restriction imposed by the Attorney General. 8 U.S.C. § 1184(k)(4).

By regulation, 8 C.F.R. § 214.2(t)(4)(ii), approval of applications for S nonimmigrant status is a two-step process involving the Criminal Division and the INS. Applications for S nonimmigrant status are submitted by law enforcement agencies to the Criminal Division. The Assistant Attorney General for the Criminal Division has been given the authority to review the applications. If appropriate, the Assistant Attorney General certifies that an application meets the requirements for S nonimmigrant status, recommends approval of the application, and forwards the application to the Commissioner of the INS. 8 C.F.R. § 214.2(t)(4)(ii). The Assistant Attorney General's authority has now been delegated to the Principal Deputy Assistant Attorney General for the Criminal Division.

The Attorney General's authority to waive grounds of inadmissibility of applicants for S nonimmigrant status has been delegated to the Commissioner of the INS. After receiving a certified application for S nonimmigrant status from the Criminal Division, the Commissioner approves or denies the application. 8 C.F.R. § 214.2(t)(5).

The Violent Crime Control Act of 1994 prohibited any alien from being granted S category nonimmigrant status after September 12, 1999. The Immigration and Naturalization Act has since been amended to extend the authorized period for admission of an alien as an S nonimmigrant by two years, to September 12, 2001. 8 U.S.C. § 1184(k)(2), 113 Stat. 1483 (November 13, 1999.) The 1999 amendments to the Immigration and Nationality Act included the Sense of the Congress that S nonimmigrant status should be used in more alien smuggling investigations than has been done in the past. 113 Stat. 1483.

Reporting Requirement

The Attorney General is required by 8 U.S.C. § 1184(k)(5)

FY 1998 | p. 23

FY 1998 | p. 24

The Honorable Orrin Hatch

Page 4

to make an annual report to Congress regarding the granting of S nonimmigrant status. Specifically, the Act requires that:

- (5) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -

- (A) the number of such nonimmigrants admitted;
- (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
- (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
- (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
- (E) the number of such nonimmigrants who have failed to report quarterly (as required under [the Act]) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(5).

Responsibility for compiling this report has been delegated to the Assistant Attorney General for the Criminal Division, in consultation with the Immigration and Naturalization Service. 8 C.F.R. § 214.2(t)(8).

Annual Report for Fiscal Year 1998

In accordance with the statutory reporting requirements, this report provides information for individuals granted S nonimmigrant status during fiscal year 1998. In addition, certain information provided in previous annual reports is

The Honorable Orrin Hatch

Page 5

updated, because all S category nonimmigrants remain under law enforcement agency (LEA) supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division in the form of annual reports from the supervising LEAs for each alien in S nonimmigrant status, and are supported by quarterly reports and other information regularly submitted by the supervising LEAs.

Since the inception of the S Visa Program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. Applications have also been sponsored by the United States Customs Service, the United States Secret Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco and Firearms, the Bureau of Diplomatic Security of the Department of State, the Inspectors General of the Department of Education and the Department of Justice, and by various Task Forces and state law enforcement agencies.

In the interest of timely reporting, the method of reporting the number of S nonimmigrant visas granted to principal aliens and derivatives employed in this report, and to be used in future reports, differs from that previously used. The Commissioner of the INS often approves the granting of S nonimmigrant status to aliens in a fiscal year following the one in which the Criminal Division recommended approval. An INS practice is to assign the S nonimmigrant visa to the allocation of the year in which it received the recommendation of the Criminal Division, rather than to the year in which the S visa was granted, the Criminal Division deferred reporting for the fiscal year until it had received grants or denials of all recommendations it had made for that year. In this report, and henceforth, the grant or denial will be reported in the year it has been made so that the report can be made shortly after the end of the fiscal year. When appropriate, future reports will update prior reports to reflect the allocations made to the earlier years.

The information provided below in response to statutory reporting requirements reflects the data on the S visa program as of September 30, 1998, the end of fiscal year 1998.

FY 1998 | p. 25

The Honorable Orrin Hatch

Page 6

(A) The number of aliens granted S nonimmigrant status

During fiscal year 1998, 56 witnesses or informants and 36 family members were granted S nonimmigrant status. All of these individuals were classified as S(i) nonimmigrants.

During fiscal year 1998, the Assistant Attorney General for the Criminal Division approved applications for an additional 37 witnesses or informants and 19 family members for S nonimmigrant status. These applications were submitted to the INS for the approval of the Commissioner. Aliens granted S nonimmigrant status by the INS pursuant to these applications will be assigned to the 1998 fiscal year allotment in accordance with INS's usual practice.

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 1998, the cooperation of the aliens granted S nonimmigrant classification during fiscal year 1998 had resulted in 153 prosecutions and the conviction of 240 defendants. In addition, the cooperation of these aliens contributed to 48 successful investigations involving 124 targets.

(C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification during fiscal year 1998. However, a number of the aliens granted S nonimmigrant status were involved in the investigation or prosecution of cases involving terrorism.

(D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 1998, the cooperation of four of the aliens granted S nonimmigrant status in 1998 had not resulted in a successful prosecution or investigation. The

FY 1998 | p. 26

The Honorable Orrin Hatch

Page 7

sponsoring LEAs report that the cooperation of three of those aliens has resulted in eight open investigations and the identification of 28 targets.

(E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 1998, 15 principal aliens failed to report every quarter as required. Of these, eleven principal aliens and their 18 family members granted S nonimmigrant classification for fiscal years 1995, 1996, and 1997, returned to their native countries and no longer have S nonimmigrant status. Of the remaining four aliens granted S nonimmigrant status for fiscal year 1998 that did not report every quarter as required, one has died, one has acquired lawful permanent resident status through other means, and two were delayed in reporting during their respective moves from one state to another within the United States.

During fiscal year 1998, one alien granted S nonimmigrant classification in 1995 was convicted of narcotics trafficking, and is in prison. One alien granted S nonimmigrant status for fiscal year 1996 was sentenced to prison for violating the terms of his/her supervised release. One alien granted derivative S nonimmigrant classification for fiscal year 1996 (the spouse of a principal alien) was convicted of attempted narcotics trafficking and was removed from the United States. These three aliens no longer have S nonimmigrant status. Fiscal year 1998 is the first year since the S visa program was established that an alien with S nonimmigrant status has been convicted of a felony for conduct committed after receiving the S nonimmigrant status.

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

John C. Keeney
Principal Deputy Assistant
Attorney General

FY 1998 | p. 27

The Honorable Orrin Hatch

Page 8

cc: The Honorable Patrick Leahy
Ranking Minority Member,
Committee on the Judiciary

FY 1998 | p. 28

Image Not Available

1999

U.S. Department of Justice
Criminal Division

Office of the Deputy Assistant Attorney General

Washington, DC 20530-0001

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by 8 U.S.C. § 1184(k)(5), concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to § 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S). This report is for fiscal year 1999 and is the fifth such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service (INS).

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or State law enforcement authorities or to a Federal or State court. 8 U.S.C. § 1101(a)(15)(S)(i). The Attorney General must also determine that the alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or enterprise. *Id.* The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 200. 8 U.S.C. § 1184(k)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the

FY 1999 | p. 29

5

The Honorable Patrick Leahy

Page 2

Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii). The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under 22 U.S.C. § 2708(a). *Id.* The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 50. 8 U.S.C. § 1184(k)(1).

The Act also provides for derivative nonimmigrant classification for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants. This derivative status is limited to spouses, married and unmarried sons and daughters, and parents. 8 U.S.C. § 1101(a)(15)(S).

The Act requires that the Attorney General determine whether a ground for inadmissibility exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for inadmissibility if the Attorney General considers that it is in the national interest to do so. 8 U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an S(i) nonimmigrant to that of an alien lawfully admitted for permanent residence if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. 8 U.S.C. § 1255(j)(1). Similarly, the Attorney General may adjust the status of an S(ii) nonimmigrant to that of an alien lawfully admitted for permanent residence if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an individual involved in such an act of terrorism, and the nonimmigrant has received a reward under 22 U.S.C. § 2708(a). 8 U.S.C. § 1255(j)(2).

An alien witness or informant admitted as either an S(i)

FY 1999 | p. 30

The Honorable Patrick Leahy

Page 3

or S(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of removal, any action for removal instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation, or restriction imposed by the Attorney General. 8 U.S.C. § 1184(k)(4).

By regulation, 8 C.F.R. § 214.2(t)(4)(iii), approval of applications for S nonimmigrant status is a two-step process involving the Criminal Division and the INS. Applications for S nonimmigrant status are submitted by law enforcement agencies to the Criminal Division. The Assistant Attorney General for the Criminal Division has been given the authority to review the applications. If appropriate, the Assistant Attorney General certifies that an application meets the requirements for S nonimmigrant status and recommends approval of the application, and forwards the application to the Commissioner of the INS. 8 C.F.R. § 214.2(t)(4)(iii).

The Attorney General's authority to waive grounds of inadmissibility of applicants for S nonimmigrant status has been delegated to the Commissioner of the INS. After receiving a certified application for S nonimmigrant status from the Criminal Division, the Commissioner approves or denies the application. 8 C.F.R. § 214.2(t)(5).

The Violent Crime Control Act of 1994 prohibited any alien from being granted S category nonimmigrant status after September 12, 1999. The Immigration and Nationality Act has since been amended to extend the authorized period for admission of an alien as an S nonimmigrant by two years, to September 12, 2001. 8 U.S.C. § 1184(k)(2); 113 Stat. 1483 (November 13, 1999). The 1999 amendments to the Immigration and Nationality Act included the Sense of the Congress that S nonimmigrant status should be used in more alien smuggling investigations than has been done in the past. 113 Stat. 1483.

Reporting Requirement

The Attorney General is required by 8 U.S.C. § 1184(k)(5)

FY 1999 | p. 31

The Honorable Patrick Leahy

Page 4

to make an annual report to Congress regarding the granting of S nonimmigrant status. Specifically, the Act requires that:

- (5) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under [the Act]) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(5).

Responsibility for compiling this report has been delegated to the Assistant Attorney General for the Criminal Division, in consultation with the Immigration and Naturalization Service. 8 C.F.R. § 214.2(t)(8).

Annual Report for Fiscal Year 1999

In accordance with the statutory reporting requirements, this report provides information for individuals granted S nonimmigrant status during fiscal year 1999. In addition, certain information provided in previous annual reports has been updated, because all S category nonimmigrants remain under law

FY 1999 | p. 32

The Honorable Patrick Leahy

Page 5

enforcement agency (LEA) supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division in the form of annual reports from the supervising LEAs for each alien in S nonimmigrant status, and are supported by quarterly reports and other information regularly submitted by the supervising LEAs.

Since the inception of the S Visa Program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. Applications have also been sponsored by the United States Customs Service, the United States Secret Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco and Firearms, the Bureau of Diplomatic Security of the Department of State, the Inspectors General of the Department of Education and the Department of Justice, and by various Task Forces and state law enforcement agencies.

Unless otherwise indicated, the information provided below in response to statutory reporting requirements reflects the data on the S visa program as of September 30, 1999, the end of fiscal year 1999.

(A) The number of aliens granted S nonimmigrant status

During fiscal year 1999, 50 witnesses or informants and 33 family members were granted S nonimmigrant status. Of these, 39 witnesses and 20 derivatives were assigned by the INS to the allocation for fiscal year 1998, the year in which these applications were received by the INS from the Criminal Division. All of these individuals were classified as S(i) nonimmigrants.

During fiscal year 1999, the Assistant Attorney General for the Criminal Division approved applications for an additional 53 witnesses or informants and 47 family members for S nonimmigrant status. These applications were submitted to the INS during fiscal year 1999 for the approval of the Commissioner. Aliens granted S nonimmigrant status by the INS pursuant to these applications will be assigned to the 1999 fiscal year allotment, in accordance with the INS's usual practice.

FY 1999 | p. 33

The Honorable Patrick Leahy

Page 7

applied for lawful permanent resident status by virtue thereof, and one alien granted S nonimmigrant classification for fiscal year 1998 has died.

One alien granted S nonimmigrant status for fiscal year 1996 has failed to report every quarter since his arrest for violating the terms of his/her parole. One alien granted S nonimmigrant status for fiscal year 1996 was delayed in reporting during his/her move from one state to another within the United States.

During fiscal year 1999, four principal aliens were convicted of crimes. One alien granted S nonimmigrant classification for fiscal year 1998 was convicted of disorderly conduct, and paid a fine. One alien granted S nonimmigrant classification for fiscal year 1999 pled guilty to domestic violence, and was sentenced to one year of probation.

One alien granted S nonimmigrant classification for 1997 was convicted of narcotics trafficking, and one alien granted S nonimmigrant status for fiscal year 1998 was convicted of violating the terms of his/her supervised release. These two aliens no longer have S nonimmigrant status.

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

John C. Keeney
Deputy Assistant Attorney General

cc: The Honorable Orrin Hatch
Ranking Minority Member,
Committee on the Judiciary

FY 1999 | p. 35

The Honorable Patrick Leahy

Page 6

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 1999, the cooperation of the aliens granted S nonimmigrant classification during fiscal year 1999 had resulted in 124 prosecutions and the conviction of 181 defendants. In addition, the cooperation of these aliens contributed to 50 successful investigations involving 121 targets.

The cooperation of aliens granted S nonimmigrant status in fiscal years prior to 1999 have resulted in continued benefits to law enforcement. During fiscal year 1999, the cooperation of the aliens granted S nonimmigrant classification for fiscal years 1995 through fiscal year 1998 resulted in an additional 32 prosecutions, 20 convictions, 32 investigations, and the pursuit of an additional 103 targets.

(C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification during fiscal year 1999.

(D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 1999, the cooperation of all of the aliens granted S nonimmigrant status in 1999 had resulted in a successful prosecution or investigation.

(E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 1999, six principal aliens failed to report every quarter as required. Of these, two principal aliens granted S nonimmigrant classification for fiscal years 1996 and 1997 returned to their native countries and no longer have S nonimmigrant status, one alien granted S nonimmigrant status for fiscal year 1997 married a United States citizen and has

FY 1999 | p. 34

Image Not Available
2000

Office of the Deputy Assistant Attorney General

U.S. Department of Justice

Criminal Division

Washington, DC 20530-0001

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by 8 U.S.C. § 1184(k)(4) (amended October 1, 2001,) concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to § 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S). This report is for fiscal year 2000 and is the sixth such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service (INS).

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or State law enforcement authorities or to a Federal or State court. 8 U.S.C. § 1101(a)(15)(S)(i). The Attorney General must also determine that the alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or enterprise. *Id.* The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 200. 8 U.S.C. § 1184(k)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the

FY 2000 | p. 36

The Honorable Patrick Leahy

Page 2

Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii). The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under 22 U.S.C. § 2708(a). *Id.* The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 50. 8 U.S.C. § 1184(k)(1).

The Act also provides for derivative nonimmigrant classification for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants. This derivative status is limited to spouses, married and unmarried sons and daughters, and parents. 8 U.S.C. § 1101(a)(15)(S).

The Act requires that the Attorney General determine whether a ground for inadmissibility exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for inadmissibility if the Attorney General considers that it is in the national interest to do so. 8 U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an S(i) nonimmigrant to that of an alien lawfully admitted for permanent residence if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. 8 U.S.C. § 1255(j)(1). Similarly, the Attorney General may adjust the status of an S(ii) nonimmigrant to that of an alien lawfully admitted for permanent residence if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an individual involved in such an act of terrorism, and the nonimmigrant has received a reward under 22 U.S.C. § 2708(a). 8 U.S.C. § 1255(j)(2).

An alien witness or informant admitted as either an S(i)

FY 2000 | p. 37

The Honorable Patrick Leahy

Page 3

or S(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of removal, any action for removal instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation, or restriction imposed by the Attorney General. 8 U.S.C. § 1184(k)(3) (amended October 1, 2001).

By regulation, approval of applications for S nonimmigrant status is a two-step process involving the Criminal Division and the INS. Applications for S nonimmigrant status are submitted by law enforcement agencies (LEAs) to the Criminal Division. The Assistant Attorney General for the Criminal Division has been given the authority to review the applications. If appropriate, the Assistant Attorney General certifies that an application meets the requirements for S nonimmigrant status, recommends approval of the application, and forwards the application to the Commissioner of the INS. 8 C.F.R. § 214.2(t)(4)(ii).

The Attorney General's authority to waive grounds of inadmissibility of applicants for S nonimmigrant status has been delegated to the Commissioner of the INS. After receiving a certified application for S nonimmigrant status from the Criminal Division, the Commissioner approves or denies the application. 8 C.F.R. § 214.2(t)(5).

The Violent Crime Control Act of 1994 prohibited any alien from being granted S category nonimmigrant status after September 12, 1999. The Immigration and Naturalization Act was amended to extend the authorized period for admission of an alien as an S nonimmigrant by two years, to September 12, 2001. The Immigration and Naturalization Act has subsequently been again amended to repeal the expiration date and to make the authority to admit S category nonimmigrants permanent. 8 U.S.C. § 1184(k) (amended October 1, 2001).

FY 2000 | p. 38

The Honorable Patrick Leahy

Page 4

Reporting Requirement

The Attorney General is required by 8 U.S.C. § 1184(k)(4) (amended October 1, 2001) to make an annual report to Congress regarding the granting of S nonimmigrant status. Specifically, the Act requires that:

- (4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under [the Act]) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(4) (amended October 1, 2001).

Responsibility for compiling this report has been delegated to the Assistant Attorney General for the Criminal Division, in consultation with the Immigration and Naturalization Service. 8 C.F.R. § 214.2(t)(8).

FY 2000 | p. 39

The Honorable Patrick Leahy

Page 5

Annual Report for Fiscal Year 2000

In accordance with the statutory reporting requirements, this report provides information for individuals granted S nonimmigrant status during fiscal year 2000. In addition, certain information provided in previous annual reports has been updated, because all S category nonimmigrants remain under LEA supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division in the form of annual reports from the supervising LEAs for each alien in S nonimmigrant status, and are supported by quarterly reports and other information regularly submitted by the supervising LEAs.

Since the inception of the S Visa program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. Applications have also been sponsored by the United States Customs Service, the United States Secret Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco and Firearms, the Bureau of Diplomatic Security of the Department of State, the Environmental Protection Agency, the Inspectors General of the Department of Education and the Department of Justice, United States Attorneys Offices, and by various Task Forces and state law enforcement agencies.

Unless otherwise indicated, the information provided below in response to statutory reporting requirements reflects the data on the S Visa program as of September 30, 2000, the end of fiscal year 2000.

(A) The number of aliens granted S nonimmigrant status

During fiscal year 2000, 21 witnesses or informants and 17 family members were granted S nonimmigrant status. Of these, 19 witnesses and all 17 derivatives were assigned by the INS to the allocation for fiscal years prior to 2000, in the year in which these applications were received by the INS from the Criminal Division. All of these individuals were classified as S(i) nonimmigrants.

FY 2000 | p. 40

The Honorable Patrick Leahy

Page 6

During fiscal year 2000, the Assistant Attorney General for the Criminal Division approved applications for an additional 97 witnesses or informants and 122 family members for S nonimmigrant status. These applications were submitted to the INS during fiscal year 2000 for the approval of the Commissioner. Aliens granted S nonimmigrant status by the INS pursuant to these applications will be assigned to the 2000 fiscal year allotment, in accordance with the INS's usual practice.

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 2000, the cooperation of the aliens granted S nonimmigrant classification during fiscal year 2000 had resulted in 89 prosecutions and the conviction of 132 defendants. In addition, the cooperation of these aliens contributed to 46 successful investigations involving 186 targets.

The cooperation of aliens granted S nonimmigrant status in fiscal years prior to 2000 have resulted in continued benefits to law enforcement. During fiscal year 2000, the cooperation of the aliens granted S nonimmigrant classification for fiscal years 1995 through fiscal year 1999 resulted in an additional 89 prosecutions, 185 convictions, 61 investigations, and the pursuit of an additional 40 targets.

C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification during fiscal year 2000.

(D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 2000, the cooperation of all of the aliens granted S nonimmigrant status in 2000 had resulted in a successful prosecution or investigation.

FY 2000 | p. 41

The Honorable Patrick Leahy

Page 7

(E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 2000, eight principal aliens failed to report every quarter as required. Of these, one alien granted S nonimmigrant classification for fiscal year 1998 returned to his/her native country and no longer desires S nonimmigrant status. One alien granted S nonimmigrant classification for fiscal year 1998 was delayed in reporting during his/her move from one location to another within the United States.

One alien granted S nonimmigrant status for fiscal year 1996 and one alien granted S nonimmigrant status for fiscal year 1999 failed to report due to ignorance of the reporting requirements.

One alien granted S nonimmigrant status for fiscal year 1998 has failed to report every quarter since his/her indictment for conspiracy to distribute cocaine. This alien no longer has S nonimmigrant status.

Three aliens, two of whom were granted S nonimmigrant status for fiscal year 1996, and one of whom was granted S nonimmigrant status for fiscal year 1997 failed to report each quarter as required after having been granted approval to apply for adjustment of status to that of permanent resident. Contact with these aliens is currently being sought so that it can be determined if adjustment is still appropriate.

During fiscal year 2000, two principal aliens were convicted of crimes. One alien granted S nonimmigrant classification for fiscal year 1998 was convicted of violating the terms of probation. One alien granted S nonimmigrant classification for fiscal year 1998 pled guilty to misprision of a felony with respect to a narcotics trafficking charge. These two aliens no longer have S nonimmigrant status.

FY 2000 | p. 42

The Honorable Patrick Leahy

Page 8

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

John C. Keeney
Deputy Assistant Attorney General

cc: The Honorable Orrin Hatch
Ranking Minority Member,
Committee on the Judiciary

FY 2000 | p. 43

Image Not Available

U.S. Department of Justice

Criminal Division

2001

Office of the Deputy Assistant Attorney General

Washington, DC 20530-0001

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by 8 U.S.C. § 1184(k)(4) (amended October 1, 2001,) concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to § 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S).¹ This report is for fiscal year 2001 and is the seventh such annual report submitted under the terms of the Act. It has been prepared in consultation with the Immigration and Naturalization Service (INS).

Background

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification for two categories of alien witnesses and informants. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who the Attorney General has determined is in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or State law enforcement authorities or to a Federal or State court. 8 U.S.C. § 1101(a)(15)(S)(i). The Attorney General must also determine that the alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in a criminal organization or

¹ The Homeland Security Act of 2002, P.L. 107-296, is not discussed herein, as it does not affect reporting for Fiscal Year 2001.

FY 2001 | p. 44

The Honorable Patrick Leahy

Page 2

enterprise. *Id.* The number of witnesses or informants who may be granted (S)(i) nonimmigrant classification in any fiscal year may not exceed 200. 8 U.S.C. § 1184(k)(1).

The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii). The Secretary of State and the Attorney General must also determine that the alien will be or has been placed in danger as a result of providing such information, and is eligible to receive a reward under 22 U.S.C. § 2708(a). *Id.* The number of witnesses or informants who may be granted (S)(ii) visas in any fiscal year may not exceed 50. 8 U.S.C. § 1184(k)(1).

The Act also provides for derivative nonimmigrant classification for immediate family members of (S)(i) and (S)(ii) category alien witnesses or informants. This derivative status is limited to spouses, married and unmarried sons and daughters, and parents. 8 U.S.C. § 1101(a)(15)(S).

The Act requires that the Attorney General determine whether a ground for inadmissibility exists with respect to any S category visa applicant. The Attorney General has discretion to waive most grounds for inadmissibility if the Attorney General considers that it is in the national interest to do so. 8 U.S.C. § 1182(d)(1).

The Attorney General may adjust the status of an S(i) nonimmigrant to that of an alien lawfully admitted for permanent residence if, in the opinion of the Attorney General, the alien has supplied information as agreed, and the information has substantially contributed to a successful criminal investigation or prosecution. 8 U.S.C. § 1255(j)(1). Similarly, the Attorney General may adjust the status of an S(ii) nonimmigrant to that of an alien lawfully admitted for permanent residence if the alien has, in the sole discretion of the Attorney General, supplied information as agreed, the information has substantially contributed to the prevention or frustration of an act of terrorism, or to a successful investigation or prosecution of an

FY 2001 | p. 45

The Honorable Patrick Leahy

Page 3

individual involved in such an act of terrorism, and the nonimmigrant has received a reward under 22 U.S.C. § 2708(a). 8 U.S.C. § 1255(j)(2).

An alien witness or informant admitted as either an S(i) or S(ii) category nonimmigrant must report quarterly to the Attorney General, may not be convicted of any crime punishable by one year or more of imprisonment after the date of admission, must waive the right to contest, other than on the basis of an application for withholding of removal, any action for removal instituted before the alien obtains lawful permanent resident status, and must abide by any other condition, limitation, or restriction imposed by the Attorney General. 8 U.S.C. § 1184(k)(3) (amended October 1, 2001).

By regulation, approval of applications for S nonimmigrant status is a two-step process involving the Criminal Division and the INS. Applications for S nonimmigrant status are submitted by law enforcement agencies (LEAs) to the Criminal Division. The Assistant Attorney General for the Criminal Division has been given the authority to review the applications. If appropriate, the Assistant Attorney General certifies that an application meets the requirements for S nonimmigrant status, recommends approval of the application, and forwards the application to the Commissioner of the INS. 8 C.F.R. § 214.2(t)(4)(ii).

The Attorney General's authority to waive grounds of inadmissibility of applicants for S nonimmigrant status has been delegated to the Commissioner of the INS. After receiving a certified application for S nonimmigrant status from the Criminal Division, the Commissioner approves or denies the application. 8 C.F.R. § 214.2(t)(5).

The Violent Crime Control Act of 1994 prohibited any alien from being granted S category nonimmigrant status after September 12, 1999. The Immigration and Naturalization Act was amended to extend the authorized period for admission of an alien as an S nonimmigrant by two years, to September 12, 2001. The Immigration and Naturalization Act has subsequently been again amended to repeal the expiration date and to make the authority to admit S category nonimmigrants permanent. 8 U.S.C. § 1184(k) (amended October 1, 2001).

FY 2001 | p. 46

The Honorable Patrick Leahy

Page 4

Reporting Requirement

The Attorney General is required by 8 U.S.C. § 1184(k)(4) (amended October 1, 2001) to make an annual report to Congress regarding the granting of S nonimmigrant status. Specifically, the Act requires that:

- (4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under [the Act]) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(4) (amended October 1, 2001).

Responsibility for compiling this report has been delegated to the Assistant Attorney General for the Criminal Division, in consultation with the Immigration and Naturalization Service. 8 C.F.R. § 214.2(t)(8).

FY 2001 | p. 47

The Honorable Patrick Leahy

Page 5

Annual Report for Fiscal Year 2000

In accordance with the statutory reporting requirements, this report provides information for individuals granted S nonimmigrant status during fiscal year 2000. In addition, certain information provided in previous annual reports has been updated, because all S category nonimmigrants remain under LEA supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division in the form of annual reports from the supervising LEAs for each alien in S nonimmigrant status, and are supported by quarterly reports and other information regularly submitted by the supervising LEAs.

Since the inception of the S Visa program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. Applications have also been sponsored by the United States Customs Service, the United States Secret Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco and Firearms, the Bureau of Diplomatic Security of the Department of State, the Environmental Protection Agency, the Inspectors General of the Department of Education and the Department of Justice, United States Attorneys Offices, and by various Task Forces and state law enforcement agencies.

Unless otherwise indicated, the information provided below in response to statutory reporting requirements reflects the data on the S Visa program as of September 30, 2001, the end of fiscal year 2001.

(A) The number of aliens granted S nonimmigrant status

During fiscal year 2001, 105 witnesses or informants and 122 family members were granted S nonimmigrant status. Of these, 79 witnesses and 90 derivatives were assigned by the INS to the allocation for fiscal years prior to 2001, in the year in which these applications were received by the INS from the Criminal Division. All of these individuals were classified as S(i) nonimmigrants.

FY 2001 | p. 48

The Honorable Patrick Leahy

Page 6

During fiscal year 2001, the Assistant Attorney General for the Criminal Division approved applications for an additional 29 witnesses or informants and 29 family members for S nonimmigrant status. These applications were submitted to the INS during fiscal year 2001 for the approval of the Commissioner. Aliens granted S nonimmigrant status by the INS pursuant to these applications will be assigned to the 2001 fiscal year allotment, in accordance with the INS's usual practice.

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 2001, the cooperation of the aliens granted S nonimmigrant classification during fiscal year 2001 had resulted in **XX** prosecutions and the conviction of **XX** defendants. In addition, the cooperation of these aliens contributed to **XX** successful investigations involving **XX** targets.

The cooperation of aliens granted S nonimmigrant status in fiscal years prior to 2001 have resulted in continued benefits to law enforcement. During fiscal year 2001, the cooperation of the aliens granted S nonimmigrant classification for fiscal years 1995 through fiscal year 2000 resulted in an additional 2 prosecutions, 3 convictions, 14 investigations, and the pursuit of an additional 50 targets.

C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of aliens granted S nonimmigrant classification during fiscal year 2001.

(D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 2001, the cooperation of all of the aliens granted S nonimmigrant status in 2001 had resulted in a successful prosecution or investigation.

FY 2001 | p. 49

The Honorable Patrick Leahy

Page 7

(E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 2001, four principal aliens failed to report every quarter as required. Of these, one alien granted S nonimmigrant classification for fiscal year 1999 returned to his/her native country and no longer desires S nonimmigrant status. One alien granted S nonimmigrant classification for fiscal year 1998 was delayed in reporting during his/her move from one location to another within the United States.

One alien granted S nonimmigrant status for fiscal year 1998 has failed to report every quarter as required, and no longer has S nonimmigrant status.

One alien granted S nonimmigrant classification for fiscal year 1996 has failed to report every quarter as required, and the sponsoring law enforcement agency is investigating why the lapse occurred.

During fiscal year 2001, no principal aliens were convicted of a crimes

FY 2001 | p. 50

The Honorable Patrick Leahy

Page 8

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

John C. Keeney
Deputy Assistant Attorney General

cc: The Honorable Orrin Hatch
Ranking Minority Member,
Committee on the Judiciary

U.S. Department of Justice
Criminal Division

2002
Assistant Attorney General
Washington, D.C. 20530

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the Senate, as required by 8 U.S.C. § 1184(k)(4)(amended October 1, 2001), concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to § 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S). This report is for fiscal year 2002 and is the eighth such annual report submitted under the terms of the Act. It has been prepared in consultation with the former Immigration and Naturalization Service (INS)¹ and the United States Bureau of Immigration and Customs Enforcement (ICE) of the Department of Homeland Security.²

The Violent Crime Control Act of 1994 created a new "S" nonimmigrant classification under United States immigration law.³ This classification may be made available for up to a maximum of 200 aliens per fiscal year who have critical, reliable information which is necessary for the successful investigation and/or prosecution of a criminal organization and for up to 50 aliens who provide information concerning a terrorist organization and qualify for a Department of State antiterrorism reward. If approved for S classification, such an alien may be admitted to the United States in a temporary nonimmigrant status for up to three years. In approving an application for S classification, grounds of inadmissibility which might otherwise prevent the person from entering or remaining in the United States, may be waived. If the alien complies with the terms of admission, he or she may become eligible to apply for permanent resident status.

¹ The Homeland Security Act of 2002, P.L. 107-296, abolished the INS, formerly part of the Department of Justice, and transferred its immigration enforcement functions to the Department of Homeland Security in March 2003.

² The Homeland Security Act of 2002, P.L. 107-296, is not discussed herein, except as specifically referenced, as it does not affect reporting for Fiscal Year 2002.

FY 2001 | p. 51

FY 2002 | p. 52

8

Page 2

The Attorney General is required by 8 U.S.C. § 1184(k)(amended October 1, 2001) to make an annual report to Congress regarding the granting of S nonimmigrant status. Specifically, the Act requires that:

- (4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under [the Act]) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(4)(amended October 1, 2001).

Responsibility for compiling this report is assigned by regulation to the Assistant Attorney General for the Criminal Division, in consultation with the Immigration and Naturalization Service, 8 C.F.R. § 214.2(t)(8), whose functions with regard to S Visa reporting have now been absorbed by ICE.

Annual Report for Fiscal Year 2002

In accordance with the statutory reporting requirements, this report provides information for individuals granted S nonimmigrant status during fiscal year 2002. In addition, certain information provided in previous annual reports has been updated, because all S category nonimmigrants remain under law enforcement agency (LEA) supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division by the supervising LEAs for each alien in S nonimmigrant status.

FY 2002 | p. 53

Page 3

Since the inception of the S Visa program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service. Applications have also been sponsored by the United States Customs Service, the United States Secret Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Bureau of Diplomatic Security of the Department of State, the Environmental Protection Agency, the Inspectors General of the Department of Education and the Department of Justice, United States Attorneys Offices, and by various Task Forces and state law enforcement agencies.

Unless otherwise indicated, the information provided below in response to statutory reporting requirements reflects the data on the S Visa program as of September 30, 2002, the end of fiscal year 2002.

(A) The number of aliens granted S nonimmigrant status

During fiscal year 2002, 43 witnesses or informants and 40 family members were granted S nonimmigrant status. Of these, 22 witnesses and 27 derivatives were assigned by the INS to the allocation for fiscal years prior to 2002, in the year in which these applications were received by the INS from the Criminal Division. All of these individuals were classified as S³ nonimmigrants.

During fiscal year 2002, the Assistant Attorney General for the Criminal Division approved applications for an additional 22 witnesses or informants and 25 family members for S nonimmigrant status. These applications were submitted to the INS during fiscal year 2002 for the approval of the Commissioner, but had not yet been approved by the end of FY 2002. Aliens

³ S nonimmigrant visa classification falls into two categories. The first category of nonimmigrant classification, (S)(i), may be granted to an alien who has been determined to be in possession of critical reliable information concerning a criminal organization or enterprise, which the alien is willing to supply or has supplied to Federal or State law enforcement authorities or to a Federal or State court. 8 U.S.C. § 1101(a)(15)(S)(i). The second category of nonimmigrant classification, (S)(ii), may be granted to an alien who the Secretary of State and the Attorney General jointly determine is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court. 8 U.S.C. § 1101(a)(15)(S)(ii).

FY 2002 | p. 54

Page 4

subsequently granted S nonimmigrant status by the INS pursuant to these applications were assigned to the 2002 fiscal year allotment, in accordance with the INS's usual practice.

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 2002, the cooperation of the aliens granted S nonimmigrant classification during fiscal year 2002 had resulted in 191 prosecutions and the conviction of 225 defendants. In addition, the cooperation of these aliens contributed to 84 successful investigations involving 263 targets.

The cooperation of aliens granted S nonimmigrant status in fiscal years prior to 2002 has resulted in continued benefits to law enforcement. During fiscal year 2002, the cooperation of the aliens granted S nonimmigrant classification for fiscal years 1995 through fiscal year 2001 resulted in an additional 12 prosecutions, 10 convictions, 7 investigations, and the pursuit of an additional 78 targets.

(C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of an alien granted S nonimmigrant classification during fiscal year 2002.

(D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 2002, the cooperation of all of the aliens granted S nonimmigrant status in 2002, had resulted in a successful prosecution or investigation.

(E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 2002, three principal aliens, all of whom received S nonimmigrant classification prior to fiscal year 2002, failed to report every quarter as required. One of these aliens returned to his/her native country and no longer desires S nonimmigrant status. Two aliens failed to report as required by the regulations because the law enforcement agents responsible for monitoring the aliens were unaware of the monitoring requirements. Both of those situations have since been corrected, and the aliens are reporting as required.

During fiscal year 2002, four principal aliens, all of whom received S nonimmigrant classification prior to fiscal year 2002, were convicted of crimes. One alien was convicted in

FY 2002 | p. 55

FY 2002 | p. 56

2002 of narcotics trafficking, and was deported. One alien was convicted of assaulting a brother. The alien's S Visa status was allowed to expire without adjustment. One alien pled guilty to a misdemeanor for having written a bad check, and made immediate restitution. One alien was convicted of driving on a suspended license for the second time, and his S Visa status was terminated.

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

Christopher A. Wray
Assistant Attorney General

By:
John C. Keeney
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary



2003

U.S. Department of Justice
Criminal Division

Assistant Attorney General

Washington, D.C. 20530

The Honorable Arlen Specter
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is to report to the Committee on the Judiciary of the House of Representatives, as required by 8 U.S.C. § 1184(k)(4)(amended October 1, 2001), concerning alien witnesses or informants who have been granted nonimmigrant status pursuant to § 101(a)(15)(S) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(S). This report is for fiscal year 2003 and is the ninth such annual report submitted under the terms of the Act. It has been prepared in consultation with the former Immigration and Naturalization Service (INS)¹ and the United States Bureau of Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS).

The Violent Crime Control Act of 1994 created a new "S" nonimmigrant classification under United States immigration law. This classification may be made available for up to a maximum of 200 aliens per fiscal year who have critical, reliable information which is necessary for the successful investigation and/or prosecution of a criminal organization and for up to 50 aliens who provide information concerning a terrorist organization and qualify for a Department of State antiterrorism reward. If approved for S classification, such an alien may be admitted to the United States in a temporary nonimmigrant status for up to three years. In approving an application for S classification, grounds of inadmissibility which might otherwise prevent the person from entering or remaining in the United States, may be waived. If the alien complies with the terms of admission, he or she may become eligible to apply for permanent resident status.

The Attorney General is required by 8 U.S.C. § 1184(k)(4)(amended October 1, 2001) to make an annual report to Congress regarding the granting of S nonimmigrant status. Specifically, the Act requires that:

¹ The Homeland Security Act of 2002, P.L. 107-296, abolished the INS, formerly part of the Department of Justice, and transferred its immigration enforcement functions to the Department of Homeland Security in March 2003.

FY 2003 | p. 57

Page 2

- (4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning -
 - (A) the number of such nonimmigrants admitted;
 - (B) the number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens;
 - (C) the number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens;
 - (D) the number of such nonimmigrants whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and
 - (E) the number of such nonimmigrants who have failed to report quarterly (as required under [the Act]) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

8 U.S.C. § 1184(k)(4)(amended October 1, 2001).

Although the Homeland Security Act of 2002 transferred many of the Attorney General's immigration-related functions, including the authority to grant S visas, to the Secretary of DHS, responsibility for compiling this report is assigned by regulation to the Assistant Attorney General for the Criminal Division, in consultation with the Immigration and Naturalization Service, 8 C.F.R. § 214.2(l)(8), whose functions with regard to S Visa reporting have now been absorbed by ICE.

Annual Report for Fiscal Year 2003

In accordance with the statutory reporting requirements, this report provides information for individuals granted S nonimmigrant status during fiscal year 2003. In addition, certain information provided in previous annual reports has been updated, because all S category nonimmigrants remain under law enforcement agency (LEA) supervision and, thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status. The following results are derived from data submitted to the Criminal Division by the supervising LEAs for aliens in S nonimmigrant status.

Since the inception of the S Visa program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United

FY 2003 | p. 58

Page 4

classification during fiscal year 2003 had resulted in 114 prosecutions and the conviction of 200 defendants. In addition, the cooperation of these aliens contributed to 71 successful investigations involving 159 targets.

The cooperation of aliens granted S nonimmigrant status in fiscal years prior to 2003 has resulted in continued benefits to law enforcement. During fiscal year 2003, the cooperation of aliens granted S nonimmigrant classification for fiscal years 1995 through fiscal year 2002 resulted in an additional 33 prosecutions, 28 convictions, 8 investigations, and the pursuit of an additional 67 targets.

- (C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of an alien granted S nonimmigrant classification during fiscal year 2003.

- (D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 2003, the cooperation of all of the aliens granted S nonimmigrant status in 2003, had resulted in a successful prosecution or investigation.

- (E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 2003, two principal alien, who received S nonimmigrant classification prior to fiscal year 2003, failed to report every quarter as required. As a result of these failures to report, the S nonimmigrant status of both of the aliens was terminated.

During fiscal year 2003, two principal aliens, all of whom received S nonimmigrant classification prior to fiscal year 2003, were convicted of crimes. One alien was convicted of credit card fraud, and one alien was convicted of driving on a suspended license for the second time. The S Visa status of both of these aliens was terminated.

FY 2003 | p. 59

FY 2003 | p. 60

Page 5

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

Alice S. Fisher
Assistant Attorney General

By:

John C. Keeney
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary

FY 2003 | p. 61

Page 2

Homeland Security (formerly the Attorney General) jointly determine that the alien is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation, which information the alien is willing to supply or has supplied to Federal law enforcement authorities or to a Federal court, if the alien would be in danger as a result of providing such information, and the alien is eligible to receive a reward under the State Department's Rewards for Justice Program. 8 U.S.C. § 1101(a)(15)(S)(ii).

If approved for S nonimmigrant classification, an alien may be admitted to the United States in a temporary nonimmigrant status for up to three years. When an application for S nonimmigrant classification is approved, grounds of inadmissibility which might otherwise prevent the person from legally entering or remaining in the United States are waived. If the alien complies with the terms of the S nonimmigrant classification, he or she may become eligible to apply for permanent resident status.

Prior to the enactment of the Homeland Security Act of 2002, the Attorney General was required by 8 U.S.C. § 1184(k) to submit an annual report to Congress regarding specific matters concerning aliens who were granted S nonimmigrant status. Starting with the report for fiscal year 2005, the DHS, which now has the authority to grant S Visas, will be submitting the annual report to Congress.

In accordance with the applicable statutory reporting requirements, this report provides information for individuals granted S nonimmigrant classification during fiscal year 2004. In addition, this report contains updated information about aliens who were granted S nonimmigrant status before fiscal year 2004, about whom information was provided in previous annual reports. All aliens who have S nonimmigrant status are under law enforcement agency (LEA) supervision and thus, continue to be subject to statutory reporting requirements for the entire period that they remain in S nonimmigrant status.

Since the inception of the S Visa program, the majority of the applications for S nonimmigrant status have been sponsored by the Drug Enforcement Administration, the Federal Bureau of Investigation, and the former Immigration and Naturalization Service. Applications have also been sponsored by the DHS, the former United States Customs Service, the United States Secret Service, the Internal Revenue Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Marshals Service, the Bureau of Diplomatic Security of the Department of State, the Environmental Protection Agency, the Inspector General of the Department of Education, the United States Attorney's Offices, and by various Task Forces and state law enforcement agencies. The results presented below are derived from data submitted to the Criminal Division by the supervising LEAs for aliens in S nonimmigrant status.²

² Unless otherwise indicated, the information provided reflects data on the S Visa program as of September 30, 2004, the end of fiscal year 2004.

FY 2004 | p. 63



2004

U.S. Department of Justice
Criminal Division

Assistant Attorney General

Washington, D.C. 20530

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to report to the Committee on the Judiciary of the Senate, as required by 8 U.S.C. § 1184(k)(4), concerning alien witnesses or informants who have been granted S nonimmigrant classification pursuant to Section 101(a)(15)(S) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(S) (the Act). This report is for fiscal year 2004 and is the tenth such annual report submitted under the requirements of the Act. It has been prepared in consultation with the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement.

Established by the Violent Crime Control Act of 1994, "S" nonimmigrant classification, commonly known as an S Visa, is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation.¹ Specifically, an alien who has been determined to be in possession of critical reliable information concerning a criminal organization or enterprise, which information the alien is willing to supply or has supplied to Federal or State law enforcement authorities or to a Federal or State court, is eligible for S(i) nonimmigrant classification. 8 U.S.C. § 1101(a)(15)(S)(i). Alternatively, an alien is eligible for S(ii) nonimmigrant classification if the Secretary of State and the Secretary of the Department of

¹ S nonimmigrant classification may be granted to a maximum of 200 aliens per fiscal year who have assisted law enforcement authorities by providing critical, reliable information concerning a criminal organization or enterprise and whose presence is necessary for the successful investigation and/or prosecution of an individual involved in a criminal organization or enterprise. S nonimmigrant classification may be granted to a maximum of 50 aliens who assist Federal law enforcement authorities by providing information concerning a terrorist organization and qualify for a reward under the State Department's Rewards for Justice Program. The number of applications submitted to the Department of Justice for its review has never reached or exceeded these numerical limits.

FY 2004 | p. 62

Page 3

The following reports the information that is required by the Act:

(A) The number of aliens granted S nonimmigrant status

During fiscal year 2004, the DHS granted S(i) nonimmigrant status to 44 witnesses or informants and derivative S nonimmigrant status to 37 family members. S(i) aliens qualify for S nonimmigrant classification by providing cooperation in an investigation or prosecution involving a criminal organization or enterprise.

Also during fiscal year 2004, the Assistant Attorney General for the Criminal Division submitted applications for 76 witnesses or informants and 100 family members to the Secretary of the DHS for approval of S(i) nonimmigrant status. The DHS did not render final disposition on these applications during fiscal year 2004.

(B) The number of successful criminal prosecutions or investigations resulting from the cooperation of such aliens

As of the end of fiscal year 2004, the cooperation of the 44 aliens granted S nonimmigrant classification during fiscal year 2004 had resulted in 340 prosecutions and the conviction of 272 defendants.³

The cooperation of aliens granted S nonimmigrant status in fiscal years prior to 2004 has resulted in continued benefits to law enforcement in addition to the successful investigations or prosecutions which were the bases for granting the S Visas. During fiscal year 2004, the cooperation of aliens granted S nonimmigrant classification for fiscal years 1995 through 2003 resulted in an additional seven prosecutions and four convictions.

(C) The number of terrorist acts prevented or frustrated resulting from the cooperation of such aliens

No terrorist acts are known to have been prevented or frustrated by the cooperation of an alien granted S nonimmigrant classification during fiscal year 2004.

³ These statistics are derived from reports submitted to the Criminal Division by the law enforcement agencies setting forth the number of investigations, prosecutions, convictions, and targets pursued as a result of the cooperation of the alien witnesses or informants, and from information submitted by the law enforcement agencies and prosecutors as part of the S Visa application process.

FY 2004 | p. 64

Page 4

- (D) The number of aliens granted S nonimmigrant status whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act

As of the end of fiscal year 2004, the cooperation of all of the aliens granted S nonimmigrant classification in 2004 had resulted in a successful prosecution or investigation. No aliens were granted S(ii) status during fiscal year 2004, and accordingly, none failed to prevent or frustrate a terrorist act.

- (E) The number of aliens granted S nonimmigrant status who have failed to report quarterly or who were convicted of crimes

During fiscal year 2004, no aliens failed to report quarterly or were convicted of crimes, as reported by the LEAs.

We hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance with regard to this or any other matter.

Sincerely,

Alice S. Fisher
Assistant Attorney General

By:

John C. Keeney
Deputy Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary

FY 2004 | p. 65

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:

Four hundred and seventeen (417) prosecutions and two hundred and ninety-four (294) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.

- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:

Ten (10) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.

- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:

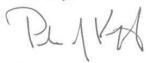
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.

- E. The number of aliens granted S nonimmigrant classifications who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:

- i. Two (2) aliens granted S nonimmigrant classification and zero (0) derivative family members failed to report quarterly to the Attorney General.
- ii. Four (4) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Member

FY 2012 | p. 67



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 26, 2014

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Attorney General, in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2012

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
- i. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to sixty (60) aliens and seventy-one (71) family members.
 - ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S (i) classification, and to 50 under the S (ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's Citizen and Immigration Services. The latter has final authority to approve or deny the S Visa applications.

FY 2012 | p. 66



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 17, 2015

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Attorney General, in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2013

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
- i. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to twenty-seven (27) aliens and twenty (20) family members.
 - ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S (i) classification, and to 50 under the S (ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's Citizen and Immigration Services. The latter has final authority to approve or deny the S Visa applications.

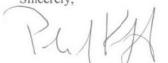
FY 2013 | p. 68

For original size page pdf of Appendix A, visit www.NACDL.org/SVisaReport

The Honorable Robert W. Goodlatte
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
One hundred and forty-eight (148) prosecutions and seventy-four (74) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
Zero (0) terrorist acts known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classifications who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - i. Zero (0) aliens and zero (0) derivative family members granted S nonimmigrant classification failed to report quarterly to the Attorney General.
 - ii. One (1) alien granted S nonimmigrant classification and zero (0) derivative family members granted S nonimmigrant classification were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

FY 2013 | p. 69

The Honorable John Conyers, Jr.
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
One hundred and forty-eight (148) prosecutions and seventy-four (74) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
Zero (0) terrorist acts known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classifications who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - i. Zero (0) aliens and zero (0) derivative family members granted S nonimmigrant classification failed to report quarterly to the Attorney General.
 - ii. One (1) alien granted S nonimmigrant classification and zero (0) derivative family members granted S nonimmigrant classification were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

FY 2013 | p. 71



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 17, 2015

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Conyers:

The Attorney General, in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2013

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
 - i. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to twenty-seven (27) aliens and twenty (20) family members.
 - ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's Citizen and Immigration Services. The latter has final authority to approve or deny the S Visa applications.

FY 2013 | p. 70



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 7, 2016

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2014

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
 - i. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to twenty-eight (28) aliens and nineteen (19) family members.
 - ii. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

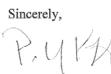
¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S Visa applications.

FY 2014 | p. 72

The Honorable Robert W. Goodlatte
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
Seventy-eight (78) prosecutions and fifty-seven (57) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
One (1) terrorist act is known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classification who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - i. Zero (0) aliens and (0) derivative family members granted S nonimmigrant classification failed to report quarterly to the Attorney General.
 - ii. Zero (0) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

FY 2014 | p. 73



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 7, 2016

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Conyers:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2014

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
 - i. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to twenty-eight (28) aliens and nineteen (19) family members.
 - ii. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

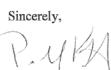
¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S Visa applications.

FY 2014 | p. 74

The Honorable John Conyers, Jr.
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
Seventy-eight (78) prosecutions and fifty-seven (57) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
One (1) terrorist act is known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classification who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - i. Zero (0) aliens and (0) derivative family members granted S nonimmigrant classification failed to report quarterly to the Attorney General.
 - ii. Zero (0) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

FY 2014 | p. 75



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 27, 2016

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2015

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
 - i. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to twenty-six (26) aliens and fifteen (15) family members.
 - ii. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S Visa applications.

FY 2015 | p. 76

For original size page pdf of Appendix A, visit www.NACDL.org/SVisaReport

The Honorable Robert W. Goodlatte
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
Ninety-two (92) prosecutions and ninety-six (96) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
Zero (0) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classifications who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - i. One (1) alien and zero (0) derivative family members granted S nonimmigrant classification failed to report quarterly to the Attorney General.
 - ii. Zero (0) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely

Peter J. Kadzik
Assistant Attorney General

FY 2015 | p. 77



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 27, 2016

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Conyers:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2015

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
 - i. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to twenty-six (26) aliens and fifteen (15) family members.
 - ii. DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to a maximum of 50 under the S(ii) classification. The Department reviews requests for S Visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S Visa applications.

FY 2015 | p. 78

The Honorable John Conyers, Jr.
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
Ninety-two (92) prosecutions and ninety-six (96) investigations resulted from the cooperation of the aliens granted S nonimmigrant classification.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
Zero (0) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens granted S nonimmigrant classification.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classifications who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - i. One (1) alien and zero (0) derivative family members granted S nonimmigrant classification failed to report quarterly to the Attorney General.
 - ii. Zero (0) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely

Peter J. Kadzik
Assistant Attorney General

FY 2015 | p. 79



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 08 2017

The Honorable Robert William Goodlatte
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2016

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
 - i. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to forty-five (45) aliens and forty (40) family members.
 - ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S Visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S Visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S Visa applications.

FY 2016 | p. 80

B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:

One hundred twenty-four (124) prosecutions and one hundred twenty-seven (127) investigations resulted from the cooperation of the aliens who were granted S nonimmigrant classification in FY2016.

C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:

Two (2) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens who were granted S nonimmigrant classification in FY2016.

D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:

There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.

E. The number of aliens granted S nonimmigrant classifications in FY2016 who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:

- i. Two (2) aliens and one (1) derivative family member granted S nonimmigrant classification failed to report quarterly to the Attorney General.
- ii. Zero (0) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we can be of further assistance with regard to this or any other matter.

Sincerely

Samuel R. Ramer
Acting Assistant Attorney General

2

FY 2016 | p. 81

U.S. Department of Justice

Office of Legislative Affairs



Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 08 2017

The Honorable John Conyers, Jr.,
Ranking Minority Member
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20510

Dear Representative Conyers:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), reports the following information relative to the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).¹

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2016

A. The number of aliens granted S nonimmigrant classification during this fiscal year:

- i. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to forty-five (45) aliens and forty (40) family members.
- ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to zero (0) aliens and zero (0) family members.

¹ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S visa applications.

FY 2016 | p. 82

B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:

One hundred twenty-four (124) prosecutions and one hundred twenty-seven (127) investigations resulted from the cooperation of the aliens who were granted S nonimmigrant classification in FY2016.

C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:

Two (2) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens who were granted S nonimmigrant classification in FY2016.

D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:

There were zero (0) aliens granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.

E. The number of aliens granted S nonimmigrant classifications in FY2016 who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:

- i. Two (2) aliens and one (1) derivative family member granted S nonimmigrant classification failed to report quarterly to the Attorney General.
- ii. Zero (0) aliens granted S nonimmigrant classification and zero (0) derivative family members were convicted of crimes after the date of their admission as such a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we can be of further assistance with regard to this or any other matter.

Sincerely

Samuel R. Ramer
Acting Assistant Attorney General

2

FY 2016 | p. 83

U.S. Department of Justice

Office of Legislative Affairs



Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 31 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS), reports the following information regarding the granting of "S" nonimmigrant immigration benefits, commonly known as the S Visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).³

In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2018

A. The number of aliens granted S nonimmigrant classification during this fiscal year:

- i. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to sixteen (16) aliens and fourteen (14) family members.
- ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(ii) to one (1) alien and two (2) family members.

³ The S Visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S visa applications.

FY 2018 | p. 84

The Honorable Jerrold Nadler
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
Thirty-nine (39) prosecutions and forty-five (45) investigations resulted from the cooperation of the aliens who were granted S nonimmigrant classification in FY2018.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
Two (2) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens who were granted S nonimmigrant classification in FY2018.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
Zero (0) aliens were granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classifications in FY2018 who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - v. One (1) alien and zero (0) derivative family members granted S nonimmigrant classification failed to report every quarter to the Attorney General since his/her admission as a nonimmigrant.
 - vi. Zero (0) aliens and zero (0) derivative family members who were granted S nonimmigrant classification were convicted of crimes after the date of their admission as a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Stephen E. Boyd
Assistant Attorney General

FY 2018 | p. 85

The Honorable Doug Collins
Page Two

- B. The number of successful criminal prosecutions or investigations resulting from the cooperation of aliens granted S nonimmigrant classification:
Thirty-nine (39) prosecutions and forty-five (45) investigations resulted from the cooperation of the aliens who were granted S nonimmigrant classification in FY2018.
- C. The number of terrorist acts prevented or frustrated resulting from the cooperation of aliens granted S nonimmigrant classification:
Two (2) terrorist acts are known to have been prevented or frustrated as a result of the cooperation of aliens who were granted S nonimmigrant classification in FY2018.
- D. The number of aliens granted S nonimmigrant classification whose admission or cooperation has not resulted in a successful criminal prosecution or investigation or the prevention or frustration of a terrorist act:
Zero (0) aliens were granted S nonimmigrant classification whose admission or cooperation did not result in a successful criminal prosecution or investigation, or did not prevent or frustrate a terrorist act.
- E. The number of aliens granted S nonimmigrant classifications in FY2018 who have failed to report quarterly or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant:
 - vii. One (1) alien and zero (0) derivative family members granted S nonimmigrant classification failed to report every quarter to the Attorney General since his/her admission as a nonimmigrant.
 - viii. Zero (0) aliens and zero (0) derivative family members who were granted S nonimmigrant classification were convicted of crimes after the date of their admission as a nonimmigrant.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Stephen E. Boyd
Assistant Attorney General

FY 2018 | p. 87



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 31 2018

The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Collins:

The Department of Justice (the Department), in consultation with the Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS), reports the following information regarding the granting of "S" nonimmigrant immigration benefits, commonly known as the S visa, as established by the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2024-26 (1994).⁴

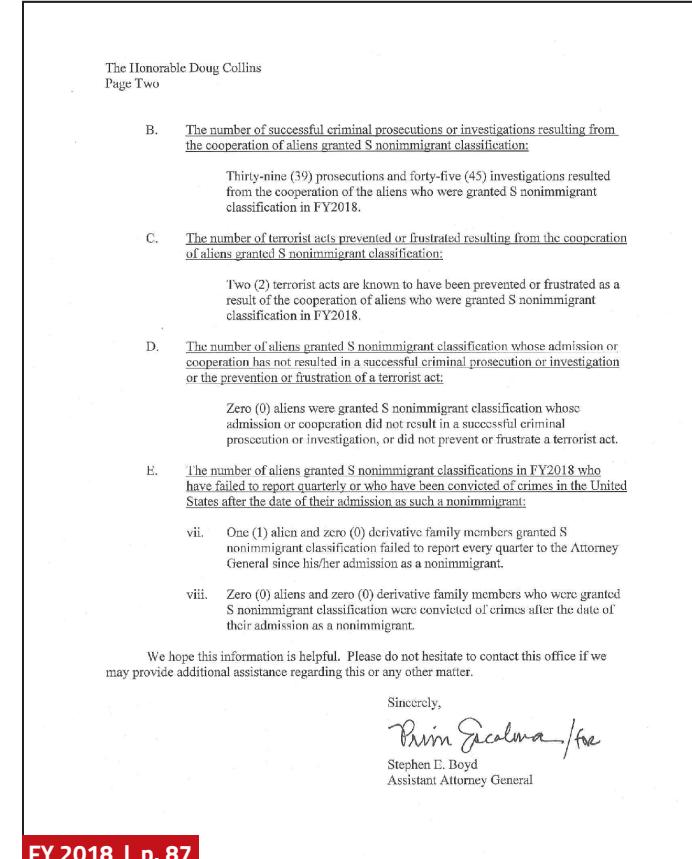
In accordance with Title 8, United States Code, Section 1184(k)(4), the information required to be reported is as follows:

Fiscal Year 2018

- A. The number of aliens granted S nonimmigrant classification during this fiscal year:
- iv. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. § 1101(a)(15)(S)(i) to sixteen (16) aliens and fourteen (14) family members.
- ii. The DHS granted S nonimmigrant classification pursuant to 8 U.S.C. §1101(a)(15)(S)(ii) to one (1) alien and two (2) family members.

⁴ The S visa is available to aliens who provide information to law enforcement authorities in an investigation or prosecution of an individual involved in a criminal organization or enterprise (subsection (i)) or, under certain circumstances, to aliens who provide information to Federal law enforcement authorities concerning a terrorist organization, enterprise or operation (subsection (ii)). S visas may be granted to a maximum of 200 aliens per fiscal year under the S(i) classification, and to 50 under the S(ii) classification. The Department of Justice reviews requests for S visas, and makes recommendations to DHS's USCIS. The latter has final authority to approve or deny the S visa applications.

FY 2018 | p. 86



APPENDIX B

Response to Freedom of Information Act Request No. NRC2018060058 to the U.S. Citizenship and Immigration Services, *inter alia*, for copies of any statistical summaries that identify the approval and/or denial of Forms I-854A within one or more of the years 2012–2017.

S Visas

FY	Received	Approved	Withdrawn	Denials
FY2017	64	42	11	0
FY2016	77	77	11	0
FY2015	132	18	6	2
FY2014	68	48	18	0
FY2013	36	45	6	0
FY2012	126	134	24	0
FY2011	118	118	5	0
FY2010	6	6	0	0
FY2009	21	15	6	0
FY2008	18	18	0	0
FY2007	44	44	0	0
FY2006	171	171	0	0
FY2005	127	127	0	0

FY2017 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF	1		2	1	1			
DEA	9	16	5	3	1	4		
FBI	10	14	7	3	2	1		
ICE-HSI	5	2	8	7				
OIG			2	0				
STATE/LOCAL			1	1				
USAO-CA	1	1						
USAO-CT	1	2						
USAO-WMDO	2				2			
TOTALS	29	35	27	15	6	5		

FY2016 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF	1		1	1				
DEA	10	5	16	13				
FBI	24	32	9	8	5	5		
ICE-HSI	4		12	7				
STATE/LOCAL	1		6	4				
USAO-CA					1			
TOTALS	40	37	44	33	6	5		

FY2015 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF	3	1	2					
DEA	29	19	6	3	4			
FBI	19	16	1	4	1		1	1
FDIC	1							
ICE-HSI	22	15						
OIG			2					
STATE/LOCAL	1				1			
USAO-CGOS	1							
USAO-WMDO	1	4						
TOTALS	77	55	11	7	6	0	1	1

FY2014 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF	3	2	1		2			
DEA	11	4	8	5	6	9		
FBI	9	16	10	8	2			
ICE-HSI	10	5	6	6	2	1		
IRS	2	3	1	3				
USAO-WMDO	1	1						
USPIS	1							
TOTALS	37	31	26	22	8	10		

FY2013 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF								
DEA	5	3	12	6	1	2		
FBI	8	7	5	4	1			
ICE-HSI	8	5	11	7	2			
TOTALS	21	15	28	17	4	2		

FY2012 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF	3	2	1	2	1			
DEA	25	15	22	15	10	7		
FBI	36	20	34	26	3			
ICE-HSI	11	9	16	17				
IRS	1	3	0	0				
STATE/ LOCAL	1		1	0				
TOTALS	77	49	74	60	14	7		

FY2011 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF	1	2	1	2				
DEA	12	7	12	7				
FBI	25	23	25	23	1	4		
ICE-HSI	17	27	17	27				
IRS	1	0	1	0				
USSS	1	2	1	2				
TOTALS	57	61	57	61	1	4		

FY2010 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF								
DEA	1	1	1	1				
FBI	1	2	1	2				
ICE-HSI	1		1					
TOTALS	3	3	3	3				

FY2009 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF								
DEA	2	7	2	7				
FBI	2	4			2	4		
ICE-HSI	3	3	3	3				
IRS								
STATE/ LOCAL								
TOTALS	7	14	5	10	2	4		

FY2008 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF								
DEA	4	2	4	2				
FBI	6	2	6	2				
ICE-HSI	2	2	2	2				
TOTALS	12	6	12	6				

FY2007 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
All LEAs	44		44					
TOTALS	44		44					

FY2006 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ALL LEAs	91	80	91	80				
TOTALS	91	80	81	80				

FY2005 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF								
DEA	13	20	13	20				
FBI	9	18	9	18				
ICE-HSI	31	36	31	36				
TOTALS	53	74	53	74				

APPENDIX C

Response to Freedom of Information Act Request No. COW2019500510 to the U.S. Citizenship and Immigration Services, for a statistical summary of the approval and/or denial of Forms I-854A for the year 2018.

FY2018 — S Visas

LEA	S Visas Received		Approved		Withdrawn		Denials	
	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives	Principal	Derivatives
ATF			2					
CBP	1	1						
DEA	14	10	2					
FBI	7	9	7	6	1			
ICE-HSI	16	20	3	5				
OIG								
STATE/LOCAL	1	1						
USAO-CA								
USAO-CT								
USAO-WMDO								
USPIS	1	1						
TOTALS	40	42	14	11	1	0	0	0

APPENDIX D

Response to Freedom of Information Act Request No. CRM-200900394F to the Department of Justice. Special thanks to Andrew Becker for providing this material to NACDL during its preparation of this Report.

FISCAL YEAR 2009 (October 1, 2009 – approx. January 2010)

S Visa Applications Received by OEO.	4
S Visas Approved by DOJ.	8

FISCAL YEAR 2008 (October 1, 2008 – September 30, 2009)

S Visa Applications Received by OEO.	49
S Visas Approved by DOJ.	45

FISCAL YEAR 2007 (October 1, 2007 – September 30, 2008)

S Visa Applications Received by OEO.	82
S Visas Approved by DOJ.	57

FISCAL YEAR 2006 (October 1, 2006 – September 30, 2007)

S Visa Applications Received by OEO.	66
S Visas Approved by DOJ.	53

FISCAL YEAR 2005 (October 1, 2005 – September 30, 2006)

S Visa Applications Received by OEO.	84
S Visas Approved by DOJ.	117

FISCAL YEAR 2004 (October 1, 2004 – September 30, 2005)

S Visa Applications Received by OEO.	57
S Visas Approved by DOJ.	42

FISCAL YEAR 2003 (October 1, 2003 – September 30, 2004)

S Visa Applications Received by OEO.	65
S Visas Approved by DOJ.	81

FISCAL YEAR 2002 (October 1, 2002 – September 30, 2003)

S Visa Applications Received by OEO.	104
S Visas Approved by DOJ.	64

FISCAL YEAR 2001 (October 1, 2001 – September 30, 2002)

S Visa Applications Received by OEO.	44
S Visas Approved by DOJ.	40

FISCAL YEAR 2000 (October 1, 2000 – September 30, 2001)

S Visa Applications Received by OEO.	66
S Visas Approved by DOJ.	58

FISCAL YEAR 1999 (October 1, 1999 – September 30, 2000)

S Visa Applications Received by OEO.	97
S Visas Approved by DOJ.	99

FISCAL YEAR 1998 (October 1, 1998 – September 30, 1999)

S Visa Applications Received by OEO.	113
S Visas Approved by DOJ.	64

FISCAL YEAR 1997 (October 1, 1997 – September 30, 1998)

S Visa Applications Received by OEO.	94
S Visas Approved by DOJ.	94

FISCAL YEAR 1996 (October 1, 1996 – September 30, 1997)

S Visa Applications Received by OEO.	76
S Visas Approved by DOJ.	36

FISCAL YEAR 1995 (October 1, 1995 – September 30, 1996)

S Visa Applications Received by OEO.	115
S Visas Approved by DOJ.	99

FISCAL YEAR 1994 (October 1, 1994 – September 30, 1995)

S Visa Applications Received by OEO.	58
S Visas Approved by DOJ.	55

This publication is available online at:

www.NACDL.org/SVisaReport

For more information contact:

NATIONAL
ASSOCIATION
OF CRIMINAL
DEFENSE LAWYERS



NACDL
FOUNDATION FOR
CRIMINAL
JUSTICE

National Association of Criminal Defense Lawyers®

1660 L Street NW, 12th Floor
Washington, DC 20036
Phone 202-872-8600
www.NACDL.org

This publication is available online at
www.NACDL.org/SVisaReport