

## **SUPPORTING STATEMENT**

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

**(Form I-854)**

**OMB No. 1615-0046**

#### **A. Justification.**

1. The collection of information is necessitated by the enactment of section 130003 of the Violent Crime Control and Enforcement Act of 1994 (VCCEA), Public Law 103-322, which established section 101(a)(15)(S) of the Immigration and Nationality Act (the Act). This S nonimmigrant category is implemented in the regulations at 8 CFR 214.2(t). With the passage of section 101(a)(15)(S) of the Act, an alien witness or informant needed in the United States by a state or federal law enforcement agency (LEA) to provide testimony and information on criminal organizations or terrorism matters may be classifiable as an S nonimmigrant and may be eligible to adjust status to that of a lawful permanent resident if the terms and conditions of the S nonimmigrant classification are fulfilled.

Apart from affording particular immigration benefits, VCCEA also charged the Department of Homeland Security (DHS) with responsibility for developing a viable system for implementing the controls imposed on S nonimmigrants and for collecting the specified information needed to annually report to Congress on the benefits and liabilities of the S nonimmigrant category. The Form I-854, will enable the U.S. Immigration and Customs Enforcement (ICE) to fulfill those responsibilities. A law enforcement agency may request S nonimmigrant classification for an essential witness or informant by

completing this form, which requires certifications by both the law enforcement agency (e.g., that it will collect the alien's statutorily-required quarterly reports and oversee the alien's departure, if that becomes necessary) and the alien. The law enforcement agency files a properly completed Form I-854 with the Criminal Division, Department of Justice, which may certify the law enforcement agency request to the U.S. Citizenship and Immigration Services (USCIS).

Form I-854 will provide a critical record of the waivers, terms and conditions, and certifications that are prerequisite to the S nonimmigrant status and a subsequent request to allow an S nonimmigrant to adjust to a lawful permanent resident status. It will provide a basis for tracking the alien and preparing the annual report to Congress. Under section 101(a)(15)(S) of the Act, the qualified spouse, married and unmarried sons and daughters, and parents of an S nonimmigrant may be granted derivative nonimmigrant status; they must be named on the Form I-854 to be subsequently eligible to adjust status to a lawful permanent resident. An alien in another valid nonimmigrant status may be able to change status to the S classification if a law enforcement agency files a request on Form I-854 on their behalf with the Criminal Division, along with other forms and documentation demonstrating eligibility to change status, and the request is approved by the Secretary, DHS, or his designee.

There are strict numerical limitations imposed on the S nonimmigrant classification; only 200 aliens may enter in an S-5 classification, to provide information on a criminal organization or enterprise, and only 50 may enter in S-6 classification, to provide

information on a terrorist organization. This form will be maintained at a centralized location at ICE.

2. The information will be used by ICE to determine eligibility for the S nonimmigrant classification. The approved form will be forwarded to the Department of State for visa issuance if the alien resides outside the United States. It will also enable ICE to provide a basis for tracking the alien and preparing the required annual report to Congress, and serve as a record of the acknowledgements and signatures of the alien and the responsible law enforcement agency. Failure to collect this information will result in the inability of ICE to approve nonimmigrant classification and other immigration benefits for individuals otherwise entitled to them and to administer the control similarly required by section 101(a)(15)(S) of the Act. The collection of this information is essential to the development of a viable and responsible system for authorizing access to critically needed but often otherwise excludable and deportable alien witnesses and informants.
3. The use of Form I-854 provides the most efficient means for collecting and processing the required data. In this case, there is no use of information technology in collecting and processing information; however, this form has been automated and will allow the law enforcement agency to complete and save the data electronically before submitting to ICE. Once ICE approves the request, the form is then submitted to USCIS for processing. This form has been designated for e-filing under the Business Transformation project.
4. A review of the USCIS/ICE inventory revealed no duplication of effort, and there is no other similar information currently available that can be used for this purpose.

5. This collection of information does not have an impact on small businesses or other small entities.
6. The collection of information is a prerequisite to the approval of any immigration benefit by an alien witness or informant. Form I-854 is completed by any law enforcement agency seeking to bring an alien witness or informant to the United States in S nonimmigrant classification, to change the valid nonimmigrant classification of an alien in the United States to S classification and, in specific cases, to have parole authorization terminated so an alien may be admitted in S classification. It provides the only means available to securing permanent resident status for an alien witness or informant who is otherwise excludable or deportable.
7. There are no special circumstances applicable to this information collection.
8. On October 6, 2009, USCIS published a 60-day notice in the Federal Register at 74 FR 51300. USCIS did not receive any comments for this information collection. On December 31, 2009, USCIS published a 30-day notice in the Federal Register at 69352.
9. USCIS does not provide payments or gifts are provided to respondents in exchange for any benefits sought.
10. There is full assurance of confidentiality.
11. There are sensitive questions due to the security needs and often complex risks faced by alien witnesses and informants who agree to testify or provide information on criminal and/or terrorist organizations. The small numerical limitation on the S visa category ensures that only aliens involved in the highest priority cases will be eligible for the S classification.

12. **Annual Reporting Burden:**

a.	Number of Respondents	125
b.	Number of Responses per each request	1
c.	Total Annual Responses	125
d.	Hours per Response	4.25
e.	Total Annual Reporting Burden	531

**Annual Reporting Burden**

**The annual reporting burden is 531.** This estimate was derived by multiplying the numbers of respondents (125) x frequency of response (1) x 4.25 (4 hours and 15 minutes) per response.

13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this collection are identified in question 14.

There is no fee associated with this information collection.

14. **Annualized Cost Analysis:**

Printing Cost	\$	135
Collecting and Processing	\$	4,865
Total Cost to Program	\$	5,000
Fee Charge	\$	0
Total Annual Cost to Government	\$	5,000

**Government Cost**

**The estimated cost of the program to the Government is 5,000.** This figure was calculated by multiplying the estimated number of respondents 125 x 1 hour, which includes the agency's time to collect and process the information x \$40 (suggested

average hourly rate for clerical, officer, and managerial time with benefits). In addition, this figure includes the estimated overhead cost for printing, stocking, distributing and processing of this form, which is \$135.

### **Annual Public Cost**

**The estimated annual public cost is \$ 5,310.** This is based on the number of respondents 125 x 4.25 hours per response x \$10 (average hourly rate).

15. There has been no increase in the estimated burden hours and costs associated with this information collection.
16. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.
17. DHS will not display the expiration date for this information collection on the form.
  - Displaying the expiration date serves no useful purpose for USCIS information collections, confuses the public, and requires USCIS to expend scarce fee revenue to re-program automated systems in order to change the expiration date.
  - At any given time there are numerous forms on the USCIS Web site that have dates on them that indicate that the form has “expired.”
  - The public, which is mostly unfamiliar with the Paperwork Reduction Act, does not know what that date means. Our experience indicates that much of the public interprets that date as meaning that the form has actually expired and thus there must be a current version available elsewhere.

- USCIS call centers receive numerous unnecessary inquiries about the “new” form when the version on the Web site has “expired” while USCIS awaits OMB approval of a revision or extension of the currently approved information collection.
- USCIS has recently posted a notice on its Web site informing the public that a form on that site that indicates that it has expired is still valid and accepted, which renders the expiration date meaningless.
- In the case of a request for an extension of an approved information collection, many of which USCIS must provide annually, the only change on the form may be the expiration date. In that case, the USCIS centralized Lockbox intake facility still must re-program its software to update it for the current version of the form at a cost of \$1,000. More extensive changes are more costly.
- Not displaying the expiration date on the form would allow USCIS to forego reprogramming costs in the case of a simple extension.

Accordingly, USCIS requests permission to not display the expiration date of this information collection because displaying the expiration date confuses the public, serves no purpose, and may require inefficient expenditure of fee revenue collected from those who have requested immigration benefits.

18. USCIS does not request an exception to the certification of this information collection.

**B. Collection of Information Employing Statistical Methods.**

Not Applicable.

**C. Certification and Signature.**

## **PAPERWORK CERTIFICATION**

In submitting this request for OMB approval, I certify that the requirements of the Privacy Act and OMB directives have been complied with including paperwork regulations, statistical standards or directives, and any other information policy directives promulgated under 5 CFR 1320.

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**Sunday Aigbe,**  
Chief,  
Regulatory Products Division,  
U.S. Citizenship and Immigration Services.

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**Date**



