

SUPPORTING STATEMENT
Inter-Agency Alien Witness and Informant Record
OMB Control No.: 1615-0046
COLLECTION INSTRUMENT: Form I-854

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

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 a maximum of 200 aliens may enter in an S-5 classification, to provide information on a criminal organization or enterprise, and only a maximum of 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. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The I-854 form and instruction is available online at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=6cdb7523cacf2110VgnVCM1000004718190aRCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>

The form can be completed online and saved electronically, but it must be submitted manually. USCIS is currently in a multi-year project to convert as many forms as possible to an electronic submission capability. The form I-854 is not currently scheduled for such conversion.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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. The information required to adjudicate an S-5 or S-6 classification is not captured on any other form and is solely collected via the I-854. There is no duplication of information collection elsewhere.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

This collection of information does not have an impact on small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This 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. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe

actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

On January 25, 2013 USCIS published a 60-day notice in the Federal Register at 78 FR 5477. USCIS did not receive comments after publishing the 60-day notice. On April 25, 2013, USCIS published a 30-day notice in the Federal Register at 78 FR 24429. USCIS did not receive comments on the 30-day notice.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

USCIS does not provide payments or gifts to respondents in exchange for a benefit sought by respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality. The System of Record Notice associated with this information collection is United States Citizenship and Immigration Services Benefits Information System, and was published in the Federal Register on September 29, 2008 at 73 FR 56596. The associated Privacy Impact Assessment is USCIS Benefits Processing of applications other than Petitions for naturalization, Refugee Status, and Asylum and was approved September 5, 2008.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This information collection contains questions that are of a sensitive nature. 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. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14**

Type of Respondent	Form Name (Form Number)	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate *	Total Annual Respondent Cost
Individuals or Households	Inter-Agency Alien Witness and Informant Record (Form I-854)	136	1	4 hours 15 mins. (4.25 hours)	578	\$36.37	\$21,022
Total		136			578		\$21,022

* The above Average Hourly Wage Rate is the [May 2011 Bureau of Labor Statistics](#) average wage for “Law Enforcement Workers” of \$25.98 times the wage rate benefit multiplier of 1.4 (to account for fringe benefits) equaling \$36.37. The selection of “All Occupations” (for example) was chosen as the expected respondents for this collection could be expected to be from any occupation.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of**

purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995; (2) to achieve regulatory compliance with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the government; or, (4) as part of customary and usual business or private practices.**

There is no capital, start-up, operational or maintenance cost associated with this collection of information. There is no fee associated with this form.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Annualized Cost Analysis:

a. Collecting and Processing: \$5,440

Total Annual Cost to the Government: \$5,440

Government Cost

The estimated cost to the Government is \$5,440 (which is funded by USCIS user fee collections). This figure is calculated by multiplying the estimated number of respondents (136) x (1) number of response x (1) hour (USCIS time required to collect and process information) x \$40.00 (suggested average hourly rate for clerical, officer, and supervisory time with benefits).

15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.

There has been an increase of 47 annual burden hours previously reported for this information collection. This change can be attributed to an adjustment in the agency estimate for the number of respondents from 125 respondents to 136. There is no modification to the form or instructions.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This information collection will not be published for statistical purposes. USCIS does not intend to employ the use of statistics or the publication thereof for this collection of information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

USCIS will display the expiration date for OMB approval of this information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.

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

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.