

Public Law 103-322, Dated 9/13/1994

Section 130003. ALIEN WITNESS COOPERATION AND COUNTERTERRORISM INFORMATION.

(a) ESTABLISHMENT OF NEW NONIMMIGRANT CLASSIFICATION- Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended--

- (1) by striking `or' at the end of subparagraph (Q),
- (2) by striking the period at the end of subparagraph (R) and inserting `; or', and

(3) by adding at the end the following new subparagraph:

`(S) subject to section 214(j), 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.'

(b) CONDITIONS OF ENTRY-

(1) WAIVER OF GROUNDS FOR EXCLUSION- Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by inserting at the beginning the following new paragraph:

`(1) The Attorney General shall determine whether a ground for exclusion exists with respect to a nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's

discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting deportation proceedings against an alien admitted as a nonimmigrant under section 101(a)(15)(S) for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).'

(2) NUMERICAL LIMITATIONS; PERIOD OF ADMISSION; ETC-
Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:

`(j)(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(i) in any fiscal year may not exceed 100. The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(ii) in any fiscal year may not exceed 25.

`(2) No alien may be admitted into the United States as such a nonimmigrant more than 5 years after the date of the enactment of this subsection.

`(3) The period of admission of an alien as such a nonimmigrant may not exceed 3 years. Such period may not be extended by the Attorney General.

`(4) As a condition for the admission, and continued stay in lawful status, of such a nonimmigrant, the nonimmigrant--

`(A) shall report not less often than quarterly to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require;

`(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission;

`(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of deportation, any action for deportation of the alien instituted before the alien obtains lawful permanent resident status; and

`(D) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

`(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 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

`(E) the number of such nonimmigrants who have failed to report quarterly (as required under paragraph (4)) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.'.

(3) PROHIBITION OF CHANGE OF STATUS- Section 248(1) of the Immigration and Naturalization Act (8 U.S.C. 1258(1)) is amended by striking `or (K)' and inserting `(K), or (S)'.

(c) ADJUSTMENT TO PERMANENT RESIDENT STATUS-

(1) IN GENERAL- Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

`(i)(1) If, in the opinion of the Attorney General--

`(A) a nonimmigrant admitted into the United States under section 101(a)(15)(S)(i) has supplied information described in subclause (I) of such section; and

`(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

`(2) If, in the sole discretion of the Attorney General--

`(A) a nonimmigrant admitted into the United States under section 101(a)(15)(S)(ii) has supplied information described in subclause (I) of such section, and

`(B) the provision of such information has substantially contributed to--

`(i) the prevention or frustration of an act of terrorism against a United States person or United States property,
or

`(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

`(C) the nonimmigrant has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

`(3) Upon the approval of adjustment of status under paragraphs (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be

issued under sections 201(d) and 203(b)(4) for the fiscal year then current.'

(2) EXCLUSIVE MEANS OF ADJUSTMENT- Section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)) is amended by striking `or' before `(4)' and by inserting before the period at the end the following: `; or (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S)'.

(d) EXTENSION OF PERIOD OF DEPORTATION FOR CONVICTION OF A CRIME- Section 241(a)(2)(A)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(I)) is amended by inserting `(or 10 years in the case of an alien provided lawful permanent resident status under section 245(i))' after `five years'.

8 CFR 214.2(t) Alien witnesses and informants--

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

(i) Possesses critical reliable information concerning a criminal organization or enterprise;

(ii) Is willing to supply, or has supplied, such information to federal or state LEA; and

(iii) Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

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

(i) Possesses critical reliable information concerning a terrorist organization, enterprise, or operation;

(ii) Is willing to supply or has supplied such information to a federal LEA;

(iii) Is in danger or has been placed in danger as a result of providing such information; and

(iv) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a).

(3) Spouse, married and unmarried sons and daughters, and parents of alien witness or informant in criminal or counterterrorism matter. An alien spouse, married or unmarried son or daughter, or parent of an alien witness or informant may be granted derivative S classification (S-7) when accompanying, or following to join, the alien witness or informant if, in the exercise of discretion by, with respect to paragraph (t)(1) of this section, the Commissioner, or, with respect to paragraph (t)(2) of this section, the Secretary of State and the Commissioner acting jointly, consider it to be appropriate. A nonimmigrant in such derivative S-7 classification shall be subject to the same period of admission, limitations, and restrictions as the alien witness or informant and must be identified by the requesting LEA on the application Form I-854 in order to qualify for S nonimmigrant classification. Family members not identified on the Form I-854 application will not be eligible for S nonimmigrant classification.

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

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

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

(B) United States Attorney certification. The United States Attorney with jurisdiction over a prosecution or investigation that forms the basis for a

request for S nonimmigrant classification must certify and endorse the application on Form I-854 and agree that no promises may be, have been, or will be made that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to lawful permanent resident, or attempt to remain beyond the authorized period of admission.

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

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

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

(A) Review of information. Upon receipt of a complete application for S nonimmigrant classification on Form I-854, with all required attachments, the Assistant Attorney General, Criminal Division, shall ensure that all information relating to the basis of the application, the need for the witness or informant, and grounds of excludability under section 212 of the Act has been provided to the Service on Form I-854, and shall consider the negative and favorable factors warranting an exercise of discretion on the alien's behalf. No application may be acted on by the Assistant Attorney General unless the eligible LEA making the request has proceeded in accordance with the instructions on, or attached to, Form I-854 and agreed to all provisions therein.

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

of the numerical limitation in order to determine which cases will be forwarded to the Commissioner.

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

- (1) All information and attachments that may constitute, or relate to, a ground or grounds of excludability under section 212(a) of the Act;
- (2) Each section of law under which the alien appears to be inadmissible;
- (3) The reasons that waiver(s) of inadmissibility are considered to be justifiable and in the national interest;
- (4) A detailed statement that the alien is eligible for S nonimmigrant classification, explaining the nature of the alien's cooperation with the government and the government's need for the alien's presence in the United States;
- (5) The intended date of arrival;
- (6) The length of the proposed stay in the United States;
- (7) The purpose of the proposed stay; and
- (8) A statement that the application falls within the statutorily specified numerical limitation.

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

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

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

(5) Decision on application.

(i) The Attorney General's authority to waive grounds of excludability pursuant to section 212 of the Act is delegated to the Commissioner and shall be exercised with regard to S nonimmigrant classification only upon the certification of the Assistant Attorney General, Criminal Division. Such

certification is nonreviewable as to the matter's significance, importance, and/or worthwhileness to law enforcement. The Commissioner shall make the final decision to approve or deny a request for S nonimmigrant classification certified by the Assistant Attorney General, Criminal Division.

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

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

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

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

(i) Ensure that the alien:

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

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

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

(D) Cooperates with the responsible LEA in accordance with the terms of his or her classification and any restrictions on Form I-854;

(ii) Provide the Assistant Attorney General, Criminal Division, with the name of the control agent on an ongoing basis and provide a quarterly report

indicating the whereabouts, activities, and any other control information required on Form I-854 or by the Assistant Attorney General;

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

(A) Report quarterly;

(B) Cooperate with the LEA;

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

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

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

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

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

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

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

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

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

(11) Failure to maintain status. An alien classified under section 101(a)(15)(S) of the Act shall abide by all the terms and conditions of his or her S nonimmigrant classification imposed by the Attorney General. If the terms and conditions of S nonimmigrant classification will not be or have not been met, or have been violated, the alien is convicted of any criminal offense punishable by a term of imprisonment of 1 year or more, is otherwise rendered deportable, or it is otherwise appropriate or in the public interest to

do so, the Commissioner shall proceed to deport an alien pursuant to the terms of 8 CFR 242.26. In the event the Commissioner decides to deport an alien witness or informant in S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deport.

(12) Change of classification.

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

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

(u) [Reserved] (Added and reserved 9/7/01; 66 FR 46697)

(v) Certain spouses and children of LPRs. Section 214.15 of this chapter provides the procedures and requirements pertaining to V nonimmigrant status. (Paragraph (v) added 9/7/01; 66 FR 46697)