

## **The ABC'S Of Immigration: S Visas for Aliens Assisting Law Enforcement**

by Gregory Siskind

We hope that none of our readers ever need to make personal use of this information, but in the interest of making a complete survey of the nonimmigrant visa classifications, this week's article discusses the S visa, often known among practitioners as the "snitch visa."

### **What is an S visa?**

The S visa is given to aliens who assist US law enforcement to investigate and prosecute crimes and terrorist activities. Until 1994, there was no separate classification for such people. Instead, they were admitted into the US in parole status. In 1994, The Violent Crime Control and Law Enforcement Act created the S category. There are two types of S visas, the S-5 and S-6.

### **How does one qualify for an S-5 visa?**

To qualify for an S-5 visa, the Attorney General must determine that the person -

- \* Possess reliable information regarding an important aspect of a crime or pending commission of a crime,
- \* Is willing to share this information with law enforcement officials or to testify in court, and
- \* That their presence in the US is necessary to the successful investigation or prosecution of the case.

### **How does one qualify for an S-6 visa?**

To qualify for an S-6 visa, both the Attorney General and the Secretary of State must determine that the person -

- o Possesses reliable information regarding an important aspect of a terrorist organization or plot,
- o Is willing to share this information with law enforcement officials or to testify in court,
- o Has or will be placed in danger for providing that information, and
- o Is eligible to receive an award from the State Department for providing such information.

### **How does one apply for an S visa?**

The petitioner in an S visa classification is the law enforcement agency with which the alien is cooperating. The application is made on Form I-854, called the Inter-Agency Alien Witness and Informant Record. The application must include the agency's reasons for seeking the cooperation of the alien. The law enforcement agency must also assume responsibility for the alien from their admission until departure. Spouses unmarried and married children and parents of S-5 and S-6 nonimmigrants are allowed to enter the US in S-7 status. They must be included on the Form I-854.

### **How many S visas are issued annually?**

Only 200 people may be admitted in S-5 status each year, and only 50 may be admitted in S-6 status. The maximum period of admission in S status is three years.

It may strike many as odd that the US has a special program for admitting S nonimmigrants. These people must be sufficiently involved in criminal or terrorist activity to provide information to US law enforcement, which would ordinarily render them inadmissible. They are allowed in the US because under the S visa program the Attorney General is authorized to waive all grounds of exclusion except those involving Nazi persecution and genocide if such a waiver is in the national interest.

### **Are there any restrictions for S visa holders while they are in the US?**

S nonimmigrants are subject to many restrictions while in the US. These are:

- o Reporting to the Attorney General every three months regarding their whereabouts and activities;
- o Not being convicted of a crime that is punishable by one or more years in prison;
- o They must agree that they will not contest a deportation order by any means other than an application for withholding based on fear of persecution if returned home if the deportation proceedings are begun before the alien becomes a permanent resident; and
- o They must adhere to any other conditions on their stay the Attorney General imposes.

### **Can S visa holders adjust their status?**

S visa holders are allowed to adjust status to permanent resident under a special provision under Section 245(j) of the Immigration and Nationality Act. If the information supplied by the alien has "substantially contributed" to a successful investigation or prosecution of a crime, they are eligible for adjustment of status. Similarly, if the alien's information "substantially contributed" to the prevention of an act of terrorism, or to the apprehension of a person involved in terrorist activities, they are allowed to adjust their status.

### **What options do family members of S visa holders have?**

Spouses, unmarried and married children and parents of S-5 and S-6 nonimmigrants are allowed to enter the US in S-7 status. Family members who have been admitted in S-7 status are allowed to adjust status as well. As with the initial application for S status, the application for permanent residency must be made by the law enforcement agency and must be filed on Form I-854. The application must be approved by the Assistant Attorney General in charge of the Criminal Division of the Justice Department and by the Commissioner of BCIS. After this approval, the alien is allowed to apply for adjustment of status on Form I-485.

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