

Instructions For Form-I-854, Inter-Agency Alien Witness and Informant Record

General Information

Purpose of This Form

This form is used by law enforcement agencies (LEAs) to bring alien witnesses and informants to the United States in an "S" non-immigrant classification.

This form provides the Department of State (DOS) and Department of Homeland Security (DHS) with information necessary to identify the requesting LEA, the alien witness and/or informant, and others, e.g., the United States Attorney, needing the information or testimony of that alien. It assists DOS and USCIS in the exercise of their joint responsibility to adjudicate requests by LEAs for S classification.

General Instructions

Please read the instructions and carefully complete all relevant parts of this form. A separate form must be used for each witness/informant requested.

Answer all questions by typing or clearly printing in black ink. Failure to answer all questions will delay the processing of this application and may result in its denial. Indicate a non-applicable question with "N/A." If the answer is "none," so state.

If you, as requesting agent, need extra space to answer any item, attach a sheet of paper with your name on it, as well as the name of the alien, the LEA requestor and the control agent. You should make copies of this completed form for your records.

Provide exact information about the request you are making (e.g., for S classification waivers of grounds of inadmissibility or adjustment of status) and complete and attach all necessary certifications and documentation.

Who Should Use This Form

This form may be used only by a Federal or State and Local LEA (The U.S. Attorney's Office is considered an LEA for purpose of this application) and only to request that an alien witness or informant, be allowed to:

- (1) Proceed into the United States pursuant to the S nonimmigrant classification;
- (2) Change nonimmigrant classification to an S classification, or;
- (3) Adjust to lawful permanent resident status from the S nonimmigrant classification.

For the witness/informant the LEA **must** specifically request:

1. S-5 or S-6 nonimmigrant classification

The S classification may be requested when an alien witness or informant intends to remain permanently in the United States

2. An S-5 classification may be requested.

For an alien who possesses and is willing to provide to the requesting LEA critical, reliable information on a criminal organization and who otherwise qualifies under section 101(a)(15)(S) of the Immigration and Nationality Act and 8 CFR 214.2 (t).

3. S-6 Classification may be requested.

For an alien who possesses and is willing to provide information on a terrorist organization, who will be or is placed in danger as a result, and is eligible for an award under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a), and who otherwise qualifies under section 101(a)(15)(S) of the Act and 8 CFR 214.2(t).

NOTE: A federal or state LEA may request S-5. However, only a Federal LEA or Federal court may request an S-6 classification for an alien witness or informant.

An LEA May Also Make a Request for Derivative Beneficiaries (Part A-6 of Form)

Qualifying relatives (spouse, married and unmarried sons and daughters, and parents) of the principal alien witness and informant may be included in a request for the S nonimmigrant classification.

All required information for such derivative beneficiaries of this request must be included at the time of filing the request for nonimmigrant classification.

Only qualifying relatives identified at the time of filing will be considered as accompanying or following to join. Proof of family relationship, biological data and grounds of inadmissibility must be attached for each named qualifying relative.

LEA May Request Status Change to S-5 or S-6 Classification

The sponsoring LEA may request USCIS to change the classification of an alien already in the United States from another classification to S-5 or S-6 classification [8 CFR 214.2(t)(12)] by filing this form and Form I-539, Application to Extend/Change Nonimmigrant Status, together with the relevant documentation and requisite fees, pursuant to the instructions below relating to filing requests for an S classification.

Request for an S Nonimmigrant to File for Adjustment of Status to Lawful Permanent Resident (LPR)

A request to allow a nonimmigrant in an S classification to file for adjustment of status as a lawful permanent resident pursuant to 8 CFR 245.11 must be submitted by the LEA that originally requested the S classification, and may not be filed until the alien has fulfilled the terms and conditions of his or her S classification.

Attach to the request on Part F of this form all relevant documentation establishing that the alien has fulfilled the terms and conditions of this or her S classification and related recommendations.

Only the derivative beneficiaries named on the request for S classification are eligible to adjust pursuant to 8 CFR 245.11.

Required Documentation

For S Classification

Requests for the S classification (8 CFR 214.2(t)) are premised on the alien witness and informant's willingness to provide critical, reliable information. You must provide clear, **very specific** statements of the following:

1. The operations that form the basis of the request. For example, if you need the alien to appear as a witness, give the date and place of the trial and the nature of the testimony you expect to receive.
2. The objective of the request. Explain fully why the admission of this alien is necessary, essential and in the national interest. The terms and conditions must be stated very clearly on or attached to this form.
3. The nature of the alien's cooperation with the Government, any bargains you have made with the alien and any benefits promised in returned.

NOTE: No promises for immigration benefits may be made to an alien seeking S classification

For Ground(s) of Inadmissibility

Part A. All grounds of inadmissibility (i.e., the reasons the alien may not be admissible to the United States) must be ascertained and a statement of each ground, or suspected ground, must be attached to this form.

Review the grounds of inadmissibility carefully with the alien and remind him or her that failure to disclose all grounds of inadmissibility (conduct or conditions) on this form may result in removal from the United States.

For each ground checked in Part A 7, you must provide a statement of all reasons why you believe discretionary waiver authority should be exercised favorably for this alien so that he or she may be admitted in the S classification.

Be as specific as possible and attach affidavits, statements, memorandums or other documentation as necessary to explain circumstances. Specific reasons for exercising discretionary waiver authority should be presented whenever possible, e.g., if the alien has a history of drug abuse, you may present evidence of rehabilitation, such as the affidavits from doctors, psychiatrists or other experts.

Documentation. Evidence submitted with this request to verify the basis of the request, i.e., for a waiver, classification or adjustment of status, may be in the form of affidavits, statements, memorandums or other documentation.

You Must Also Submit for Each Alien Named in This Request:

1. Two-sets of fingerprints and signatures on Form FD-258;
2. You **must** submit two identical color photographs of yourself taken within 30 days of the filing of this application. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched. The name of the LEA may also be noted.

Passport-style photos must be 2" x 2." The photos must be in color with full face, frontal view on a white to off-white background. Head height should measure 1" to 1 3/8" from top of hair to bottom of chin, and eye height is between 1 1/8" to 1 3/8" from bottom of photo. Your head must be bare unless you are wearing a headwear as required by a religious order of which you are a member. Using pencil or felt pen, lightly print your name and Alien Receipt Number on the back of the photo.
3. The alien's A-Number, FBI number, U.S. Social Security number, if one has been issued, and Form G-325, Biographical Information.

Required Certifications

Alien Certification

The certifications made by the alien and you, the LEA requestor, provide a critical record for the future.

After you have carefully explained the certifications in **Part B** and reviewed all statements on or attached to the form for accuracy, read the certifications to the alien and be sure that the alien understands each condition of admission and continued stay in lawful status.

If the certification is translated to ensure the alien's understanding, please so indicate. Make sure the alien understands that adjustment of status is not available unless and until he or she has satisfied the conditions of admission and continued stay in lawful status in the S classification.

LEA Certification

Your signature as a witness to the alien's certification certifies your assurance of the alien's understanding of his or her certification. LEA headquarters level certification is required to ensure that no promises have been made other than those afforded by section 101(a)(15)(S) of the Act, and that full assumption of the responsibilities outlined in the request has been authorized. The name of the LEA agency contact on the case who is available by telephone for questions and verification of information is also necessary.

United States Attorney Certification

The United States Attorney's certification is necessary if the alien witness or informant will be participating in a prosecution or investigation that falls within the jurisdictional authority of a United States Attorney, or if this form is to be submitted by a State or Local LEA.

The United States Attorney may and sometimes does refer to the Criminal Division or another federal entity. In such a case, the referred entity must provide the required certification and documentation of the referral by the United States Attorney.

Where to File

Requests for an S nonimmigrant classification or for an S nonimmigrant to file for adjustment of status, should be submitted to:

**U.S. Department of Justice
Criminal Division, Office of Enforcement Operations
Policy and Statutory Enforcement Unit
John C. Keeney Building, 10th Floor
Washington, D.C. 20530-0001**

NOTE: The Criminal Division, will forward certified requests for processing to DHS for S classification. No request for S classification may be adjudicated without the certification of the Criminal Division.

Other Information

Employment Authorization

Witnesses and informants who have received S nonimmigrant classification are entitled to receive an Employment Authorization Document (EAD), enabling them to seek employment in the United States. Aliens so entitled may request an EAD by filing Form I-765, Application for Employment Authorization, according to the instructions on that form. Form I-765 may not accompany this form and must be filed separately.

Penalties for Perjury

All statements made in response to questions on this application are declared to be true and correct under penalty of perjury 18 U.S.C 1546, provides in part:

Whoever knowingly makes under oath, or as permitted under penalty under 28 U.S.C. 1746, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed hereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned for not more than five years, or both.

The knowing placement of false information on this application may subject you and/or the preparer of this application to criminal penalties under Title 18 of the U. S. Code. The knowing placement of false information on this application may also subject you and/or the preparer to civil penalties under section 274C of the Act, 8 U.S.C. 1324c. Under 8 U.S.C. 1324c, a person subject to a final order for civil document fraud is removable from the United States and may be subject to fines.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this form, and the associated evidence, is collected under the Immigration and Nationality Act, section 101, et seq.

PURPOSE: The primary purpose for providing the requested information on this form is to determine if you have established eligibility for the immigration benefit for which you are filing. The information you provide will be used to grant or deny the benefit sought.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision or result in denial of your form.

ROUTINE USES: The information you provide on this form may be shared with other Federal, State, local, and foreign government agencies and authorized organizations following approved routine uses described in the associated published system of records notices [DHS-USCIS-007 - Benefits Information System and DHS-USCIS-001 - Alien File, Index, and National File Tracking System of Records, which can be found at www.dhs.gov/privacy]. The information may also be made available, as appropriate, for law enforcement purposes or in the interest of national security.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 4 hours and 15 minutes per response, including the time for reviewing instructions, completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, 20 Massachusetts Ave NW, Washington, DC 20529-2140. OMB No.1615-0046.
Do not mail your completed Form I-854 to this address.