

# CRS Report for Congress

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## Immigration: S Visas for Criminal and Terrorist Informants

Karma Ester  
Technical Information Specialist  
Knowledge Services Group

### Summary

In response to the terrorist acts of September 11, 2001, Congress passed legislation making permanent a provision that allows aliens with critical information on criminal or terrorist organizations to come into the United States to provide information to law enforcement officials. This legislation (S. 1424) became P.L. 107-45 on October 1, 2001. The law amended the Immigration and Nationality Act to provide permanent authority for the administration of the “S” visa, which was scheduled to expire on September 13, 2001. On November 29, 2001, then-Attorney General John Ashcroft announced the “Responsible Cooperators Program” to reach out to persons who may be eligible for the S visa. Up to 200 criminal informants and 50 terrorist informants may be admitted annually. Since FY1995, more than 500 informants and their accompanying family members have entered on S visas. No terrorist informants have been admitted into the U.S. since 1996. This report will be updated as warranted by legislative, funding, or policy developments.

### Background

Following the 1993 bombing of the World Trade Center in New York City, Congress amended the Immigration and Nationality Act (INA) to establish the new “S” nonimmigrant visa category for alien witnesses and informants as part of the Violent Crime Control Act of 1994.<sup>1</sup> Nonimmigrants are admitted for a specific purpose and a temporary period of time. Nonimmigrants — such as B-2 tourists, F-1 foreign students, A-1 diplomats, H-2A temporary agricultural workers, J-1 exchange visitors, or L intracompany business personnel — are typically referred to by the letter denoting the subsection of the INA that provides the authority for their admission; hence the “S visa” is the abbreviated reference to §101(a)(15)(S) of the INA.<sup>2</sup>

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<sup>1</sup> P.L. 103-322

<sup>2</sup> For background on immigration policy, see CRS Report RS20916, *Immigration and* (continued...)

The provision establishing the S visa in the INA was originally due to expire on September 13, 1999, but Congress extended it until September 13, 2001.<sup>3</sup> Aliens admitted through the S visa categories are designated as S-5 and S-6 nonimmigrants.<sup>4</sup> Request for these visas must be filed by a state or federal law enforcement agency, and the filing agency must assume responsibility for the alien from their time of entry until their departure, or until they adjust status. Under this law, the Attorney General<sup>5</sup> has the discretion to waive any ground of exclusion for an “S” nonimmigrant, except for those regarding Nazi persecution and genocide.<sup>6</sup> The length of stay for a S-5 or S-6 nonimmigrant is limited to three years, and no extension of stay is permitted; however, adjustment to legal permanent residence (LPR) is possible. As **Table 1** indicates, 511 informants have been admitted from FY1995 through May FY2004.

### **Criminal Informants (S-5)**

The S-5 classification may be granted to a foreign national who has been determined by the Attorney General to possess critical, reliable information concerning a criminal organization or enterprise. The alien must be willing to supply or have supplied this information to federal or state law enforcement authorities, or to a federal or state court. The Attorney General must also determine that the alien’s presence in the United States is essential to the success of an authorized criminal investigation or to the successful prosecution of an individual involved in a criminal organization or enterprise. The number of witnesses or informants granted S-5 status in a fiscal year may not exceed 200.<sup>7</sup>

### **Terrorist Informants (S-6)**

The S-6 category of classification may be granted to an alien who the Attorney General and Secretary of State have determined possesses critical, reliable information concerning a terrorist organization, operation, or enterprise, and who is willing to supply or has supplied information to federal law enforcement authorities or to a federal court. The Attorney General and Secretary must also determine that the alien has been or will be placed in danger as a result of providing information, and is eligible to receive a cash

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<sup>2</sup> (...continued)

*Naturalization Fundamentals*, by Ruth Wasem.

<sup>3</sup> 8 U.S.C. §1184(k)(2); INA §214(k)(2).

<sup>4</sup> Due to prior use of S-1 and S-2 classification codes, the S informants are designated as S-5 and S-6 even though the statutory cites are 101(a)(15)(S)(i) and (ii) of INA.

<sup>5</sup> Although current regulations (8 C.F.R. §2.1) vest all authorities and functions to administer and enforce the immigration laws (including the S visa program) with the Secretary of Homeland Security or his delegate, it can be argued that the language in the Homeland Security Act of 2002 (HSA; P.L. 107-296) has left the Attorney General with concurrent authority over the S visa program. For more information see, CRS Report RL31997, *Authority to Enforce the Immigration and Nationality Act (INA) in the Wake of the Homeland Security Act: Legal Issues*, by Stephen R. Viña.

<sup>6</sup> 8 U.S.C. §1182(a)(3)(E); INA §212(a)(3)(E).

<sup>7</sup> 8 U.S.C. §1184(j)(1); INA §214(j)(1).

reward under §36(a) of the State Department Basic Authorities Act of 1956.<sup>8</sup> The number of informants admitted under this classification may not exceed 50 in any fiscal year. No terrorist informants have been admitted under the S-6 category since 1996.

### Accompanying Family Members (S-7)

The law allows the informant's accompanying family members — including spouses, married or unmarried children, and parents — to receive S nonimmigrant visas. These accompanying family members are referred to as S-7 nonimmigrants. As detailed in **Table 1**, 332 family members of informants have been admitted from FY1995 through FY2004.

**Table 1. Nonimmigrants Admitted Under S-Visa Category, FY1995-FY2004**

Fiscal Year	Informants Admitted	Family Members Admitted
1995	59	77
1996	98	21
1997	35	19
1998	90	56
1999	50	33
2000	21	17
2001	56	22
2002	42	37
2003	30	28
2004	30	22
Total	511	332

**Source:** CRS presentation of unpublished data from the U.S. Department of Justice.

### Adjustment of Status

The Attorney General may adjust the status of S-5 nonimmigrants and their family members to that of aliens lawfully admitted for permanent residence (LPRs) if the aliens have supplied information as agreed, and the information has contributed substantially to a successful criminal investigation. The Attorney General likewise may adjust the status of S-6 nonimmigrants and their accompanying family members to LPR status if the aliens

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<sup>8</sup> 8 U.S.C. §1255(j)(2).

have — in the sole discretion of the Attorney General — substantially contributed information that led to

- the prevention or frustration of an act of terrorism against the United States, or
- a successful investigation or prosecution of an individual involved in such an act of terrorism.

The informants also must have received a reward under §36(a) of the State Department Basic Authorization Act of 1956.<sup>9</sup>

Prior to an “S” nonimmigrant adjusting status, a Form I-854 must be filed on the alien’s behalf by the federal or state law enforcement agency that originally requested the visa. Currently, this application must be approved by the Assistant Attorney General in charge of the Criminal Division of the Department of Justice and the Assistant Secretary of Immigration and Customs Enforcement of the Department of Homeland Security (DHS). These LPR adjustments are then counted against the per country ceilings of the numerically limited legal immigration system. Upon adjusting status, the nonimmigrant will remain deportable if convicted of a crime involving moral turpitude, for 10 years after the date of adjustment.

## **Other Conditions and Requirements**

Aliens admitted under the S-5 and S-6 categories are required to report quarterly to the Attorney General. If an alien fails to meet the reporting requirements, deportation proceedings may be instituted. The alien will lose lawful nonimmigrant status if convicted of any criminal offense punishable by one year or more of imprisonment after the date of admission. The alien must waive the right to contest (other than on the basis of an application for withholding of deportation) any action of deportation instituted before that alien obtains lawful permanent residence status. The alien must also abide by any other limitations, restrictions, or conditions imposed by the Attorney General.<sup>10</sup>

## **Legislative History**

Senator Edward Kennedy, chairman of the Senate Committee on the Judiciary’s Subcommittee on Immigration, introduced legislation (S. 1424) providing permanent authority for the S visa on September 13, 2001. S. 1424 passed the Senate by unanimous consent that same day, and the House likewise passed S. 1424 by unanimous consent on September 15, 2001. Members of Congress stated that it was very important to pass this legislation to aid federal, state, and local law enforcement agencies in their investigation of the terrorist attacks of September 11, 2001. On October 1, 2001, President Bush signed P.L. 107-45, providing permanent authority for admission under the S visa.

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<sup>9</sup> 8 U.S.C. §1255(j); INA §245(j).

<sup>10</sup> 8 U.S.C. §1184(k)(4); INA §214(k).

## Responsible Cooperators Program

On November 29, 2001, then-Attorney General John Ashcroft announced the “Responsible Cooperators Program” to reach out to potential terrorist informants. The Attorney General asked that all non-U.S. citizens who are present in the United States or who seek to enter our country come forward to the FBI with any valuable information they have to aid in the war on terrorism and said that, in return for this information, the Department of Justice would assist nonresident aliens in obtaining S visas.<sup>11</sup> The Attorney General also stated that aliens who provide useful and reliable information but are not technically eligible for S visas would receive assistance in seeking either parole or deferred action status, which would allow them to reside in the United States.

## Legislation in the 109<sup>th</sup> Congress

Several bills have been introduced in the 109<sup>th</sup> Congress to amend the S visa category. The Commercial Alien Smuggling Elimination Act of 2005 (H.R. 255) and the Rapid Response Border Protection Act (H.R. 4044), both introduced by Representative Sheila Jackson-Lee, would establish an additional category within the S visa to include aliens with reliable information about commercial alien smuggling enterprises. Both bills would also raise the number of annual entrants under the S visa from 250 to 400. H.R. 255 would increase the criminal penalties for people (1) bringing in and harboring aliens as part of a commercial enterprise; (2) transporting aliens in groups of 10 or more, and (3) transporting aliens in a manner that would endanger the lives of the aliens or present a risk to U.S. health. In addition, both bills would establish a reward program in the Department of Homeland Security to help eliminate these enterprises. Similarly, H.R. 1320, introduced by Representative Silvestre Reyes, would make the same changes to the program as H.R. 255 and H.R. 4044, and add an additional category that would penalize those transporting aliens for the purpose of prostitution or servitude. All three bills have been referred to the House Subcommittee on Immigration, Border Security and Claims.

On April 7, 2006, two versions of the Comprehensive Immigration Reform Act of 2006 were introduced in the Senate, as S. 2611/S. 2612, and have been commonly referred to as the Hagel/Martinez proposal. Both bills were introduced as a compromise to S. 2454, the Securing America’s Borders Act introduced by Senator Frist in March 2006.<sup>12</sup>

S. 2611/S. 2612 would expand the S visa program to include (1) nonimmigrants in possession of critical reliable information concerning the activities of governments, organizations or their agents, representatives or officials regarding weapons of mass destruction and related delivery systems; and (2) nonimmigrants that are willing to or have supplied fully and in good faith the information described above. The bills would increase the numerical limit of eligible nonimmigrants from 500 to 1,000 per fiscal year,

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<sup>11</sup> John Ashcroft, Interview, *Good Morning America*, Nov. 29, 2001.

<sup>12</sup> For further information on recent action taken by the Senate on immigration reform, see CRS Report RL33125, *Immigration Legislation and Issues in the 109<sup>th</sup> Congress*, by Andorra Bruno et al.

and make technical corrections to the INA, officially transferring administration of the S visa program to DHS.

Additionally, S. 2611/S. 2612 would require DHS to report to Congress should the number of nonimmigrants admitted under the program fall below 25% of that provided for by law. The report is required to include descriptions of the efforts made by the Secretary of Homeland Security to admit such nonimmigrants; reasons why fewer than 25% were admitted; and any extenuating circumstances contributing to the shortfall in admissions. Furthermore, the bills contain provisions for the DHS report to be classified if found to be in the interest of national security or the security of the nonimmigrant informants. In such cases, DHS is to submit non-classified copies of the report to the House and Senate Judiciary committees.

On April 24, 2006, S. 2611 introduced by Senator Specter was placed on the Senate's Legislative Calendar, and S. 2612, introduced by Senator Hagel was referred to the Senate Judiciary Committee. Floor debate on S. 2611 began on May 15, 2006.