

**NLWJC - Kagan**

**DPC - Box 032 - Folder 014**

**Immigration - Exploited**

**Alien Visas**

Luigi - exploited alien  
visas

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To: Elena Kagan/OPD/EOP  
cc: Laura Emmett/WHO/EOP, Scott Busby/NSC/EOP  
Subject: Visas for exploited aliens

As you recall, last December the NSC raised the issue of whether the Administration would support the creation of a new visa category for victims of smuggling, worker exploitation and the like who are illegally in the U.S. Scott Busby and I met with DOJ, INS and DOL this afternoon to discuss this issue.

Though the DOJ has not yet come forward with a formal proposal, they are interested in pursuing the creation of a temporary (non-immigrant) visa that would provide status (permission to remain in the U.S.) to those who step forward and provide information to the government that assists in bringing a law enforcement action against their exploiter(s).

Under their current system, INS has a visa program (the s-visa) that is used to protect illegal aliens who are material witnesses in a criminal case. Those who qualify (as determined by the local U.S. Attorney and the DOJ's Criminal Division) are eligible for temporary stays of deportation (including work authorization) and, after three years, permanent status. Traditionally, this visa category has been used to protect international criminals who have agreed to testify in a U.S. criminal proceedings against their bosses (it has been commonly referred to as the "snitch" visa). The program is capped at 250 visas per year (which includes 50 reserved specifically for international terrorists).

In recent years, the DOJ has expanded the use of the s-visa to protect victims of labor or other exploitation. For example, the s-visa was used to protect the deaf Mexicans who were involved in smuggling and exploitation in New York and the Thai women who were enslaved in California. However, the Criminal Division at Justice has put up a lot of resistance to using this visa for victims of abuse. They have been lobbying hard to retain its use only for the protection of international criminals who are helpful with criminal investigations.

Given that resistance, NSC (Eric Schwartz in particular) is very interested in our exploring the creation of a new visa category to temporarily protect the victims of egregious labor and other abuses (smuggling; prostitution rings; etc.) during the pendency of a law enforcement investigation. Though no particulars have been decided upon, this visa would likely be different from the s-visa in that: (1) it would be temporary, with only the possibility to adjust to permanent status under severe circumstances (i.e., a demonstration that return would be life threatening); and (2) it would not be limited to criminal prosecutions, but would cover administrative investigations into labor exploitation and/or smuggling (conducted by the Departments of Labor or State). Like the s-visa, it would carry an annual cap (perhaps 500) and each application for a visa would need specific approval from the investigating agency, the INS, and the AG.

DOJ is doing some background work to make sure that this would not be a big deal on the Hill. Their preliminary read is that this will be seen more as a tool to enhance enforcement against trafficking and egregious worker exploitation than anything else -- particularly b/c it is temporary and carries a small annual cap. On the whole, this seems to me to be worthwhile to explore further, as

long as we make sure that the legislative proposal is crafted very narrowly, so as not to induce people to come to this country under adverse conditions with the hope of getting work authorization (even if temporary).

Does that seem right?

Julie