9 FAM 41.83
NOTES

(CT:VISA-1542; 09-27-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 41.83 N1 BACKGROUND

(CT:VISA-1542; 09-27-2010)

On September 13, 1994, the President signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322). Section 130001 of this Act amends the Immigration and Nationality Act (INA) by adding a new subparagraph (S) at INA 101(a)(15), thus establishing a new nonimmigrant (S) classification. This new subparagraph, which took effect immediately, provides for the admission of certain witnesses and other aliens who possess critical information relating to acts of terrorism and criminal behavior. *Although the text of INA 101(a)(15) is written with terminology that relates to "S-1" and "S-2" visas, "S-5" and "S-6" are officially used as the codes for these visa classifications due to prior usage of the S code by the Department of Homeland Security (DHS).*

9 FAM 41.83 N2 S-5 CLASSIFICATION UNDER INA 101(A)(15)(S)(I)

(CT:VISA-1542; 09-27-2010)

An alien may be classified as an S-5 nonimmigrant, if the Attorney General has determined that the:

(1) Alien is in possession of critical reliable information concerning a criminal organization or enterprise;

(2) Alien is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(3) Alien's presence in the United States *has been determined by the Attorney General to be* essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

9 FAM 41.83 N2.1 S-6 Classification Under INA 101(a)(15)(S)(ii)

(CT:VISA-1542; 09-27-2010)

An alien may be classified as an S-6 nonimmigrant, if the Secretary of State and the Attorney General jointly determine that the alien:

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

(2) Is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

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

(4) Is eligible to receive a reward under *22 U.S.C. 2708.*

9 FAM 41.83 N2.2 S-7 Accompanying or Following-to-Join Dependents

(CT:VISA-1542; 09-27-2010)

If determined appropriate by the Attorney General (or the Attorney General and the Secretary of State in the case of an alien classified under INA 101(a)(15)(S)(ii)), the accompanying or following-to-join spouse, married and unmarried sons and daughters, and the parents of an S-5 or S-6 alien may also be classified as S-7. *A nonimmigrant in the S-7 visa classification will be subject to the same period of admission, limitations, and restrictions as the S-5 or S-6 alien and must be identified 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 (See 9 FAM 41.83 N.3 and 8 CFR 214.2(t)(3)).*

9 FAM 41.83 N3 DETERMINING ELIGIBILITY FOR S NONIMMIGRANT CLASSIFICATION

(CT:VISA-1542; 09-27-2010)

An interested Federal or State law enforcement authority (LEA) must initiate the process for an S visa by having a Form I-854 endorsed by the U.S. Attorney who has jurisdiction over the investigation or prosecution in question. The LEA must then file the Form I-854 directly with the Assistant

Attorney General who will review the information and, if he or she is able to certify the form, it will be forwarded to the Immigration and Customs Enforcement (ICE) commissioner. If the ICE commissioner approves the I-854, the request for S non immigrant visa classification will then be presented to the Secretary of State. Alternatively, DHS may simply parole a person into the United States without requiring issuance of a S visa by a consular officer (see 8 CFR 214.2(t)(4)).

9 FAM 41.83 N4 INA 212(D)(1) WAIVER

9 FAM 41.83 N4.1 Alien Ineligible Under 212(a)

(TL:VISA-156; 10-31-1996)

An alien otherwise classifiable as a nonimmigrant under INA 101(a)(15)(S), who is found to be ineligible under INA 212(a) (other than paragraph (3)(E)), may, if the Attorney General considers it to be in the national interest, be granted a waiver under INA 212(d)(1).

9 FAM 41.83 N5 NUMERICAL LIMITATIONS AND LENGTH OF STAY

(CT:VISA-1542; 09-27-2010)

INA 214(k) places an annual limitation on nonimmigrants who may be issued visas under INA 101(a)(15)(S)(i) and (ii) to 200 and 50 respectively. *The maximum period of admission in S visa status is three years. The Attorney General is not permitted to grant an extension of this period of time. During the alien's time in the United States, the LEA has annual reporting requirements to the Attorney General.*

9 FAM 41.83 N6 NO CHANGE OF STATUS

(CT:VISA-1542; 09-27-2010)

An alien admitted to the United States under INA 101(a)(15)(S) is prohibited from changing status to another nonimmigrant classification. *However, an alien who is already present in the United States may change status to the S classification.*

9 FAM 41.83 N7 ADJUSTMENT OF STATUS

(CT:VISA-377; 03-29-2002)

INA 245 provides for adjustment of status of aliens admitted as S-5 or S-6 to permanent resident status under certain circumstances.

9 FAM 41.83 N7.1 Adjustment from S-5 Status

(CT:VISA-1037; 09-24-2008)

An alien who entered the United States as an S-5 under INA 101(a)(15)(S)(i) may apply for adjustment to permanent resident if it is the Attorney General's opinion that:

(1) The S-5 nonimmigrant has supplied critical, reliable information concerning a criminal organization or enterprise;

(2) Such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual involved in a criminal organization or enterprise; and

(3) The alien is not ineligible under INA 212(a)(3)(E).

9 FAM 41.83 N7.2 Adjustment from S-6 Status

(CT:VISA-1542; 09-27-2010)

An alien who entered the United States as an S-6 under INA 101(a)(15)(S)(ii) may apply for adjustment to permanent resident if in the sole discretion of the Attorney General:

(1) The S-6 nonimmigrant has supplied critical, reliable information concerning a terrorist organization, enterprise or organization;

(2) Such information has substantially contributed to:

(a) The prevention or frustration of an act of terrorism against a U.S. person or U.S. property; or

(b) The success of an authorized criminal investigation of, or prosecution, of an individual involved in such an act of terrorism; and

(3) The nonimmigrant has received a reward under *22 U.S.C. 2708.*

9 FAM 41.83 N8 EMPLOYMENT IN THE UNITED STATES

(CT:VISA-1542; 09-27-2010)

An alien classified under INA 101(a)(15)(S) may, once in the United States, apply for employment authorization by using Form I-765, Application for Employment Authorization. An alien in S status may not take employment prior to the grant of the employment authorization.