

S Visas

Whether and how to expand
Remove disincentives from coming forward?

Labo Dpt. concerns re: protecting those who
are exploited by employer.

Those who co-operate in a criminal investigation
(criminal exploitation) are eligible for 3-year
S-visa program.

Non-immigrant status; w/ permission to work
(eligible)

Limitation on the # (~~200~~ 200) for principal aliens
does not count family members
Spouse/children/parents

FY 1995 - 59 principle aliens admitted

FY 96 - 98

FY 97 - 36

50 for
terrorism

2
kinds
of S visas

S-5 - those who provide info. in a criminal case
S- - those who ^{info.} terrorist organization (50)

(200)

of applications have not been high

Based on within security application (That AusAs
are used to)
(for S-5, no requirement that applicant be in danger)

Can be witnesses or informants.

→ Regs provide that if more meritorious applicants than slots, a panel is convened and can choose. This has never been an issue.

Applications are usually filed after the trial.

- ① INS regs: can't promise these
- ② Could create trial issues (show bias).

What is it for, then?
(is it a reward)

→ INS more typically gives temporary relief

(n.b. new limits on voluntary departure now limited to 20 days)

④ discretion of district director is limited to parole

(public interest parole)

material witness warrant — does not confer
(then bail them out). Immigrant Status

Only allows them to stay
in country

S visas are for folks who can't go home again. Very serious cases. ~~these~~

Sunset provisions —

1999

Lots of informal winking by INS.
(Victims in hotel rooms w/ guards outside the doors)

Need a uniform and more humane way to keep them here during the trial.

Labor/S visas to protect these illegal immigrants who inform on poor labor practices (for illegal) workplace exploitation

Want a mechanism to deal w/ the most serious workplace abuse that is, nonetheless, just short of criminal prosecution.

INS — are we looking for a temporary relief (temp. visa @ ability to work) while they testify (?)
(Yes) — but, often depends on the victim.
Some victims can't be sent back (if related to organized crime).

State Dept. surprised that S-visa being used @ end of process — thought it would be used earlier.

S-visa as a reward for being helpful in the prosecution.

Need an interim solution.

New S Visa Proposal

The INS strongly supports the Administration's view that illegal immigration to the United States increasingly involves the organized smuggling and trafficking of migrants around the world. The INS, working with other agencies, is responding to this problem with expanded efforts to identify, deter, disrupt, and prosecute those engaged in and responsible for this global, inhumane activity. A critical component of these efforts is to protect the safety and basic rights of victims of such organized activities, and to encourage victims to speak out and become witnesses so that we can more effectively combat these practices.

INS proposes that the Administration seek legislation to create a new nonimmigrant visa category to strengthen efforts by appropriate agencies to protect victims of organized smuggling and trafficking. Eligibility for this new nonimmigrant visa would be determined by the person's value to prosecution and investigation against smugglers and traffickers, and would serve the humanitarian interests of the U.S. government.

The legislation would subdivide the current S visa category. Subcategory S1 would encompass the current S visa category, which includes work authorization for individuals identified as material witnesses in a criminal case. The current S visa also allows a recipient to adjust to legal permanent residence after a period of monitoring and cooperation. The 200 person cap on this current visa category acknowledges that use of the S visa is generally limited to persons who may themselves be criminally involved but who would be of value to U.S. prosecution of others in the criminal organization.

The proposed S2 visa recognizes that the S1 subcategory is inappropriate for use with victims of smuggling and trafficking in that it does not give sufficient weight to humanitarian protections. The S2 visa should contain eligibility rules that reflect both the individual's value to law enforcement activities against the criminal organizations and the government's humanitarian interests in protecting the safety and rights of individuals caught up in these activities. The proposed S2 subcategory would be numerically capped at 3,000 per year. Whether the S2 subcategory contains provisions that lead over time to permanent residence – as does the current S visa – remains an item for further consideration.

Wendy - 514-3274

Steve W. - 647-6227

S-Visas

1-8-989

→ Dec. 10th Human Rights Day Statement

250 annual S-Visas (50 for terrorism)
linked to criminal division

bad guys

how many do we use each year (?)

Eventually get permanent residency — 3 years.
(if prosecutors recommend you)

Must be sponsored by an agency (whoever is prosecuting ^{ing})

Used S-visas in El Monte Case (though prosecutors
didn't want to use it)

→ Criminal Division resists using this for victims of
abuse b/c they have a narrow view of who should
get this

flood gate concerns
workload concerns

Schumer is interested in coming up w/ a solution
to this.

Help law enforcement by giving them back old version
of S-USA (for snitches)

Create 2d category:

material witness
linked to a case
USA Attorney involved

encourage to step forward
protecting people
sponsoring agencies could
be expanded (Labor, State)

Visa Category

non-immigrant visa

3,000

Agencies can bring a case to U.S. Atty.

Linked to a criminal investigation

(labor related; trafficking)

would recommend
whether these
folks would
qualify

At ~~some~~ some pt. the visa would expire

(time limited)

(not convertible to a permanent visa)

US Atty - Crim Div. — INS — AG

Standard for
recommendation
by US Atty (?)

critical
reliable info in
criminal prosecution (?)

Two
Issues

Criminal
prosec.

desig list
of people
who can ask
for this

define a subset
of prosecuting
(who is a victim)

Is this a non-immigrant, temp, w/work auth.?

additional element
to prove to get permanent status?

DOL: don't want criminal prosec. to be the standard
b/c too limiting.

~~Some~~ Govt. has some kind of law enforcement act:
Want DOL to be able to go to the Secy of Labor
to get this.

Victim
protection

witness
protection

[Contribution that this victim can make
to the investigation]

S-visa sunsets Sept. 1, 1999

→ Stick it in VAWA

THE WHITE HOUSE
WASHINGTON

From the Office of:

The Domestic Policy Council

**Elena Kagan
Deputy Assistant to the President
for Domestic Policy**

TO: Julie

FAX: 65581

PHONE: _____

PAGES: 2

MESSAGE: _____

Please call (202) 456-5584 if there are any problems with the transmission.

► Julie A. Fernandes
12/08/98 07:11:18 PM

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Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Human Rights Day -- POTUS statement

Scott Busby tells me that NSC wants the President to include as part of his December 10th Human Rights Day statement that the Department of Justice will explore legislative options for addressing the problem of illegal aliens who are victims of smuggling or trafficking ventures.

Under the INS's S visa program, illegal aliens are eligible for temporary stays of deportation (including work authorization) or permanent status if they are material witnesses in a criminal case. NSC would like the DOJ/INS to explore expanding the use of the S visa to cover those illegal aliens who provide information to DOJ and/or DOL, but whose cases are not criminally prosecuted. The theory is that lots of enforcement is done outside the criminal context and that these aliens, if they come forward, could be very helpful. NSC would envision a low annual cap on the number of available S visas.

According to Scott, DOJ and INS are in favor of exploring such a legislative expansion, though there is not agreement on the specifics. NSC strongly favors pursuing a legislative expansion; however, they have not yet explored what the reaction to such a proposal would be on the Hill. My concerns are: (1) congressional reaction; and (2) making 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). However, I think that the language suggested by NSC ("DOJ to explore legislative options for addressing the problem of illegal aliens who are victims of smuggling or trafficking ventures, in which aliens suffer extreme abuse") may be o.k.

What do you think?

julie

Julie - We didn't do this,
did we? Where do we
stand now?

Elena

► Julie A. Fernandes
12/15/98 02:36:25 PM
.....

Record Type: Record

To:

cc:

Subject:

Re: my e-mail re: the POTUS Human Rights Day statement. I let Scott B. know that they should not include any statement that indicates our support for an expansion of the S-visa category or any other kind of enhanced immigration relief for aliens who are the victims of smugglers, etc.

~~According to Scott~~ The President's final remarks included a very general statement that he is concerned about aliens who suffer abuses at the hands of smugglers and sweatshop owners but are afraid to come forward, and that he has asked the DOJ ~~to work with INS~~ to explore ways of addressing this problem. *Frankly, this language is more detailed than I thought it would be.*

I also let Scott know that he needs to set up a meeting with us and DOJ/INS to discuss this issue and where we go from here (apparently, over the last several months, NSC and INS have had several conversations about this).

julie

NATIONAL SECURITY COUNCIL

MULTILATERAL AND HUMANITARIAN
AFFAIRS

FAX COVER SHEET

NATIONAL
SECURITY
COUNCIL17th & Penn, N.W.
Washington, D.C.
20504Did you get a complete,
clear transmission? If not,
please call:

(202) 456-9141

From: Scott B.

To: JULIE

Agency:

Fax Number:

Date/Time:

No. of pages to follow: /

Message:

Afghanistan. I am also announcing today that USAID will provide up to \$8 million to NGOs to enhance their ability to respond rapidly to human rights emergencies.

Second, children have always been especially vulnerable to human rights violations, and I am proud to announce that we will dramatically increase our support for the fight against child labor with a tenfold increase in US assistance to the International Labor Organization, from \$3 million to \$30 million. On a different front, I am also pleased that today the Immigration and Naturalization Service is issuing new guidelines for the evaluation of asylum claims by children, making the process better serve our youngest and most vulnerable asylum seekers – especially those who have experienced forced conscription, prostitution and abusive labor.

Third, we must practice at home what we preach abroad, looking to protect people who have difficulty protecting themselves. This morning I signed an Executive Order that strengthens our ability to implement human rights treaties, and creates an interagency group to monitor our progress.

Fourth, I am concerned about ~~we are taking steps to protect~~ aliens who suffer abuses at the hands of smugglers and sweatshop owners. These victims have a built-in disincentive – their unlawful status - to complain about their abuse to U.S. authorities. ~~their unlawful status.~~ I am asking the Department of Justice to explore ~~provide me with~~ legislative options to address this problem.

Finally, I would like to repeat my support for two top legislative priorities ... an Employment Non-Discrimination Act that would ban discrimination against gays and lesbians in the workplace, and tough laws to fight the scourge of hate crime. Last year, the entire nation was