



# Questions and Answers

November 21, 2008

## **USCIS Publishes Final Rule for Religious Worker Visa Classifications**

U.S. Citizenship and Immigration Services (USCIS) announced today that it will make significant revisions to the special immigrant and nonimmigrant (R-1) religious worker visa classification regulations. The [final rule](#) will ensure the integrity of the religious worker program while streamlining the process for legitimate petitioners.

### **Q. Why is USCIS publishing this rule now?**

A. This rule was issued as a proposed rule on April 25, 2007 and is intended to address overall fraud issues arising in the religious worker program. This rule is now being issued as a final rule, with some modifications, to address the fraud issues highlighted in the proposed rule. This final is being published with an immediate effective date in order to implement the recently enacted extension of two categories of special immigrant religious workers that last expired on October 1, 2008. This will also enable USCIS to resume processing of cases that were pending, but could not be adjudicated before these two categories expired, and to accept new filings.

By way of background, there are three categories of special immigrant religious workers who are eligible for admission to the United States as permanent residents. The first category is for ministers and the second and third categories are for nonministers in religious vocations and occupations. The special immigrant categories for nonministers expired October 1, 2008. Because these special immigrant nonministers had to immigrate or adjust status to permanent residence on or before September 30, 2008, any of these cases that remained pending on October 1, 2008, have been held in abeyance pending the enactment of further legislation. Similarly, any new cases filed under the expired categories received on or after October 1, 2008, have been rejected. On October 10, 2008, President Bush signed the Special Immigrant Nonminister Religious Worker Program Act, Public Law 110-391, which granted a six-month extension until March 6, 2009. This extension, however, does not become effective until the Secretary of Homeland Security publishes final regulations eliminating or reducing fraud, issues a certification to Congress, and publishes a notice in the Federal Register that such regulations have been issued and are in effect. Now that the regulations are published and effective, USCIS has resumed the acceptance and processing of nonminister special immigrant religious worker petitions.

### **Q. What does USCIS seek to accomplish by publishing this final rule?**

A. This final rule works to eliminate fraud and strengthen the existing religious worker program. It also provides further clarity and transparency for petitioners.

**Q. How does the final rule clarify the eligibility requirements for religious workers?**

A. New and amended definitions in this rule better describe the statutory requirements. USCIS expects that this rule will better inform petitioners and beneficiaries regarding the eligibility criteria and evidentiary requirements for religious worker visa classifications and reduce the need for issuance of requests for further evidence from bona fide petitioners.

**Q. How does the rule address fraud concerns?**

A. A number of enhancements are being undertaken to combat fraud. For example, the rule requires the prospective employer to file a petition with USCIS that must be approved before a nonimmigrant religious worker will be issued a visa to enter the U.S. This is similar to the petitioning process required for religious workers seeking immigrant classification. The rule also provides additional notification to petitioners that an onsite inspection may be conducted to verify the legitimacy of the organization and job offer. Petitioners will be required to provide more reliable documentary evidence to establish eligibility.

**Q. Will nonimmigrants be able to request a religious worker visa directly at a consular post or a port-of-entry?**

A. No. Individuals seeking to enter the United States as a nonimmigrant minister or other religious worker will need to have a previously approved Form I-129, Petition for Alien Worker. The Form I-129 must be filed by the organization seeking to employ the beneficiary. Stateside review of the petition will allow USCIS to verify eligibility and that the petitioner and the job offer are legitimate prior to issuance of a visa and admission of the religious worker to the United States.

**Q. How long will nonimmigrant religious workers be allowed to stay in the United States?**

A. The statute allows nonimmigrant religious workers to stay in the United States for a maximum of five years. Under this final rule, nonimmigrants will be admitted for an initial period of up to 30 months (depending on need) with the possibility of extending their stay for an additional period of up to 30 months. Prior to applying for a new nonimmigrant R-1 visa (a new five-year maximum stay), an applicant must have lived outside the U.S. for at least one year. This one year limitation does not apply to applicants whose previous work in the U.S. was intermittent, seasonal, or if the individual resided outside the U.S. and commuted to the U.S. to do part-time work.

**Q. Will every petitioner be subject to an onsite inspection?**

A. The final rule notifies potential petitioners that an onsite inspection may be conducted prior to a decision being made on the petition. By performing onsite inspections, USCIS is better able to verify eligibility and deter fraud.

**Q. How does the final rule amend the definition of “religious occupation?”**

A. The rule amends the definition of *Religious Occupation* by removing the list of occupations listed as examples in the proposed rule. The amended definition requires that the occupation relate primarily to a traditional religious function that is recognized as a religious occupation within the denomination.

**Q. Is there a requirement that religious workers receive a salary?**

A. In both the immigrant and nonimmigrant religious worker programs, compensation may include either salaried or non-salaried compensation. Verifiable evidence must demonstrate how the alien will be supported. The final rule includes self support as a qualifying form of compensation only in the case of certain nonimmigrant missionaries. Specifically, if self support is claimed, the petitioner must submit

verifiable evidence that he or she is participating in an established program for temporary, uncompensated missionary work within the petitioning organization, which is part of a broader, international program of missionary work sponsored by the denomination.

**Q. How does the rule address missionaries?**

A. Missionaries, who do not otherwise qualify for nonimmigrant religious worker status, are allowed to enter the United States in accordance with the regulations at 8 CFR 214.2(b)(1) (allowing certain missionaries to be admitted in B-1 nonimmigrant business visitor status).

**Q. Will petitioners still be required to submit a letter when they file the Form I-129, Petition for Alien Worker, on behalf of a nonimmigrant religious worker?**

A. No. Petitioners will be required to complete the new attestation which will be contained in a revised Form I-129. The petitioner will be attesting to, for example, the beneficiary's intent and qualifications, the nature of the job offer, and the ability to compensate the beneficiary. The attestation will reduce the documentary evidence required and the need for issuance of Requests for Evidence to bona fide petitioners. Supporting evidence is required generally only in the form of reliable and verifiable documents. USCIS thus seeks to add efficiency, clarity and transparency to the process of obtaining a religious worker visa classification.

**Q. Can an organization that is not a “religious organization” under the tax code petition for a religious worker?**

A. The rule clarifies that there are two types of organizations allowed to petition for religious workers under the statute. The two types are bona fide non-profit religious organizations and non-profit organizations that are affiliated with the religious denomination. Bona fide non-profit religious organizations can establish they are qualified to petition for a religious worker by submitting a currently valid determination letter from the Internal Revenue Service showing that the organization is tax exempt as a religious organization. Affiliated organizations must establish that they are tax-exempt (although not necessarily as religious organizations) and provide documentation that demonstrates their religious nature and purpose as well as a certification by a tax-exempt religious organization in their denomination.

A valid determination letter includes those issued before the effective date of the Internal Revenue Code of 1986 and also those which may be issued under future IRC revisions). Petitioning organizations that are not classified as “religious organizations” by the Internal Revenue Service may establish that they are affiliated with the religious denomination by completing the *Religious Denomination Certification* in the revised Forms I-129 and I-360.

**Q. Why is there a requirement that religious workers in a religious vocation demonstrate a lifetime commitment to a religious way of life?**

A. The amended definition clarifies that the opportunity to participate in the program as a religious worker in a religious vocation should be reserved for those individuals whose lives are dedicated to religious practices and functions, as distinguished from secular members of the religion.

**Q. Is there a training or education requirement for religious workers in a religious occupation or for ministers?**

A. No. The petitioner will attest to the beneficiary's qualifications to perform the proposed duties for religious workers in a religious occupation.

Ministers are duly authorized by a religious denomination to conduct religious worship and other duties performed by clergy; however, by definition, there are no uniform types of training for all denominations.

**Q. How is “denominational membership” defined?**

A. The definition of *denominational membership* is premised on a shared faith and worship practices, and not on formal affiliation.

**Q. How is “religious denomination” defined?**

A. The term *religious denomination* applies to a religious group or community of believers governed or administered under some form of ‘ecclesiastical government.’ USCIS acknowledges, however, that some denominations lack a central government. Accordingly, the religious entity may satisfy the ‘ecclesiastical government’ requirement by submitting a description of its own internal governing or organizational structure.

**Q. Does the required prior experience for a special immigrant religious worker need to be in the same position as the job offered?**

A. No. The rule expands upon the interpretation of the prior experience requirement to include religious work that is not in the exact same position as the job offered. Also, the rule allows for a break of less than 2 years in the continuity of the prior work experience required, so long as the work was authorized and for a religious purpose.

**Q. Will a petitioner be required to notify USCIS when a beneficiary’s employment is terminated?**

A. A petitioner employing a nonimmigrant religious worker must notify USCIS within 14 days of any change in the beneficiary’s employment. The petitioner also has an obligation to notify USCIS when the beneficiary’s employment is terminated. In order to change employers, the new petitioner must file a new Form I-129, attestation and supporting evidence.

**Q. Is there a sunset date specified in the regulation?**

A. No. The rule is written so that a change is not needed if the sunset date is extended.

**Q. What effect does the filing of an immigrant petition on behalf of or by a nonimmigrant religious worker have on the status of the nonimmigrant worker?**

A. While a nonimmigrant must maintain the intent to depart the U.S., a nonimmigrant petition, application for initial admission, change of status, or extension of stay in R classification may not be denied solely on the basis of a filed or an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

**Q. What is the Office of Fraud Detection and National Security that is mentioned in the rule?**

A. In May 2004, the Headquarters Office of Fraud Detection and National Security (HQFDNS) was created within USCIS to enhance national security, while simultaneously continuing to administer this country’s immigration benefits.

**Q. What is a Benefit Fraud Assessment?**

A. A Benefit Fraud Assessment is used to determine the type and volume of fraud and noncompliance that exists among certain nonimmigrant and immigrant visa applications and petitions, identify systemic causes and vulnerabilities, and propose solutions (legislative, regulatory, and/or procedural). The assessments now

referred to as Benefit Fraud and Compliance Assessments primarily consist of systems searches, interviews, and site visits on randomly selected cases.

**Q. Why was the I-360 Special Immigrant Religious Worker Petition selected as the first petition for a Benefit Fraud Assessment?**

A. The Form I-360 for Special Immigrant Religious Worker classification was selected as the first petition for the Benefit Fraud Assessment because that classification was historically considered to have a high fraud rate. [See GAO Report no. 99-67 entitled Visa Issuance: Issues Concerning the Religious Worker Visa Program, dated March 1999]. The Office of Fraud Detection and National Security sought to document the extent and type of fraud in this classification. At the conclusion of the Benefit Fraud Assessment, it was determined that the special immigrant religious worker category had a fraud rate of approximately 33 percent.

**Q. What policy or process changes have resulted from the findings in the I-360 Religious Worker Petition Benefit Fraud Assessment?**

A. In addition to pursuing regulatory enhancements, USCIS has undertaken a number of procedural improvements. Chief among them are pre-adjudication site visits on religious worker petitions, including extensions of nonimmigrant stay, and conducting additional security checks.

**Q. How will USCIS prevent site visits from causing substantial delays in the adjudication of religious worker petitions?**

A. USCIS will closely monitor the site visit program to ensure that it does not cause substantial delays in the adjudication process. Where unreasonable delays are detected, USCIS will take correction action.

**Q. What will happen to the pending nonminister cases affected by the sunset**

A. Nonminister special immigrant and nonimmigrant religious worker cases that have been held in abeyance will be adjudicated in accordance with the provisions of the final rule. A Request for Evidence will be issued for any evidence required as per the new regulations, if such evidence was not initially submitted and was not contained in the record.

###