

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Service Center Operations

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TO: Ms. Sofia Zneimer	FAX: (773) 304-3185		
FROM: Emisa Tamanaha	DATE _	8/20/09	
PAGES: 5 pages including cover			
COMMENTS:		······································	

Please find attached the following:

- 1) Your letter dated July 27, 2009, and
- 2) Our response letter dated August 20, 2009.

Thank you.



U.S. Department of Homeland Security 20 Massachusetts Ave., NW Washington, DC 20529



August 20, 2009

Ms. Sofia Zneimer 2400 North Western Avenue, Suite 203 Chicago, IL 60647

RE: Inquiry on R-1 Religious Vocation

Dear Ms. Zneimer:

Thank you for your letter of July 27, 2009, in which you requested clarification as to whether or not a Catholic religious order can bring nuns to the United States in R-1 nonimmigrant status to work as nurses in affiliated Catholic hospitals, provided that they meet the definition of religious vocation as defined by 8 CFR 214.2(r)(3) and that they fully satisfy all requirements to practice nursing under both state law and Immigration and Nationality Law.

You have indicated that although 8 CFR 214.2(r)(8)(xi) requires that the alien will not be engaged in secular employment, regulations do not provide a definition of "secular employment" and it is unclear as to whether or not a person who meets the definition of "religious vocation" could work in an occupation that is not traditionally religious such as a nurse.

USCIS acknowledges that while the definition of "religious occupation" as defined by 8 CFR 214.2(r)(3) excludes duties that are primarily administrative or support that are not incidental to religious functions, the definition of "religious vocation" does not mention such exclusion.

Accordingly, the Employer Attestation section of the R-1 Classification Supplement to the Form I-129 asks under item 9:

If the position is **not a religious vocation** [emphasis added], the alien will not engage in secular employment, and the prospective employer will provide salaried or non-salaried compensation. If the position is a traditionally uncompensated and **not a religious vocation** [emphasis added], the alien will not engage in secular employment, and the alien will provide self-support.

The above question as listed on the Employer Attestation suggests that the absolute exclusion of duties that are secular in nature do not apply to a religious vocation. Furthermore, 8 CFR 214.2(r)(3) defines religious vocation to mean a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a

Page 2

class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. It also provides examples of religious vocations to include nuns.

Therefore, for the purpose of this specific fact scenario it appears that, in general, a Catholic religious order may file an I-129 petition seeking R-1 classification for a nun who meets the definition of religious vocation to work as a nurse in a bona fide Catholic hospital affiliated with the religious denomination. However, the petitioning organization must still demonstrate that it qualifies as a religious organization as stipulated by the regulations and the beneficiary must satisfy all requirements to practice nursing under both the state law and Immigration and Nationality Law as well as other applicable regulations. Please note that USCIS can not pre-adjudicate these R-1 nonimmigrant petitions. Instead, each request filed by a religious organization on behalf of an R-1 nonimmigrant worker is fact-dependent, and therefore must be considered on a case-by-case basis.

We hope that you find this information helpful.

Sincerely,

Barbara Q. Velarde

Chief

Office of Service Center Operations

Zneimer & Zneimer P.C.

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July 27, 2009

Emisa Tamanaha
Adjudications Officer - Business and Trade Services
Service Center Operations
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW., 3rd Floor
Washington, DC 20529

RE: Request for Advisory Opinion
R-1 for Religious Vocation

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Dear Ms. Tamanaha,

We kindly request a clarification of the R-1 regulations, and specifically, 8 C.F.R. Sec. 214.2(r)(8)(xi) as it relates to Religious Vocation ("That the alien will not be engaged in secular employment.") The regulations do not provide a definition of "secular employment" and it is unclear whether a person who satisfies the requirements of Religious Vocation, could work in an occupation that is not traditionally religious, as for example as a Nurse. We believe that the question, whether a person who satisfies the requirements of Religious Vocation is qualified for R-1 status, requires an analysis on what the beneficiary's status is within the religious organization and not what kind of employment the R-1 beneficiary would have in the United States.

According to the regulations, Religious Vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia to a religious way of life. 8 C.F.R. Sec. 204.5(m)(5). Neither the statute nor this definition require such person to engage in strictly religious occupation. The Foreign Affairs Manual addresses this issue and acknowledges that an alien that satisfies the Religious Vocation requirements is "presumed to be engaging in activities relating to a traditional religious function regardless of the nature of the

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Page | 2

activity." The FAM further acknowledges that "Persons with religious vocations may engage in any type of activity within their religious vocations, denomination, or its affiliate. The absolute exclusion of janitors, aintenance workers, clerk, etc. from the definition of "religious occupation" does not apply to religious vocations." 9 FAM 41.58 N10.2-1 Religious Vocations (CT:VISA-1077; 10-17-2008).

The FAM specifically acknowledges that "nurses of the Christian Science Church (Church of Christ, Scientist) may properly be considered as ministers of religion. Readers and lecturers do not qualify as ministers, but could qualify as aliens seeking to work in a religious vocation or occupation." 9 FAM 41.58 N9.3 Practitioners and Nurses of Christian Science Church (TL:VISA-58; 04-30-1992)

Therefore, we kindly seek clarifications from the Department of Homeland Security regarding the following fact scenario:

Can a Catholic religious order bring nuns to the United States who fully satisfy all conditions under the definition of Religious Vocation, to work as nurses in closely affiliated Catholic hospitals, if the nuns have also met all requirements to practice nursing, under both state law and Immigration and Nationality Law?

We would appreciate your timely response

Sincerely

Sona Zneimer

SZ/rg