

RELIGIOUS WORKERS

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I. HISTORY

Prior to October 1, 1991 a religious worker had to use a "B-1", "H-1B", "H-3", "L-1" or "J-1" nonimmigrant visa to come to the United States on a temporary basis. If an alien religious worker wanted to immigrate to the United States he or she had to qualify for a third or sixth preference visa INA sec. 203(a)(3) or (6), 8 USC 1153(a)(3) or (6) or under INA sec. 101(a)(27)(c), 8 USC sec. 1101(a)(27)(c). However, the Department of Labor did exempt religious occupations from the labor certification process as long as the occupation was covered by Group III of Schedule A. 20 CFR Sections 656.10(c) and 656.22(e).

II. SPECIAL IMMIGRANT

A. Requirements. Section 151 of the Immigration Act of 1990 added a new category "C" to the term "special immigrant" as defined by INA § 101(a)(27)(C), 8 U.S.C. § 1101(a)(27)(C). This new category is to provide up to 10,000 visas per fiscal year of which not more than 5,000 visas may be made available in any fiscal year to those special immigrants described in paragraphs (C)(II) and (C)(III) below. Immigration Act of 1990, § 121(a).

A "C special immigrant" is:

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who-

(i) for at least two years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States-

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 1994, in order to work for the organization at the request of the

organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 1994, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the two-year period described in clause (i).

B. Supporting Evidence. The petitioner is to present with the petition the following documentation:

1. Evidence that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization. Evidence that the organization qualifies as a nonprofit organization may be in the form of either:

a. Documentation showing that it, and any affiliate which will employ the person, is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations which is usually evidenced by a determination letter from the Internal Revenue Service. In appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested; or

b. Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

2. A letter or letters from authorized officials at the specific organizational unit of the religious organization which will be employing the alien or engaging the alien's service in the United States. If the alien is to be employed, this letter should come from the organizational unit that will maintain the alien's Form I-9, employment eligibility verification, that is, the organizational unit that is either paying the alien's salary or otherwise remunerating the alien in exchange for services rendered. This letter in detail must establish:

a. That, if the alien's religious membership was maintained, in whole or in part outside the United States, the foreign and United States religious organizations belong to the same religious denomination;

b. That, immediately prior to the petition for the immigrant visa, the alien has the required two (2) years of membership in the religious denomination.

c. That, immediately prior to the petition for the immigrant visa, the alien has the required two (2) years of qualifying religious work.

3. Evidence that the alien meets the criteria to perform such services. The proof should consist of the following where appropriate:

a. That, if the alien is a minister, he or she is authorized to conduct religious worship for that denomination and to perform other duties usually performed by authorized members of the clergy of that denomination including a detailed description of those duties;

b. That, if the alien is a religious professional, he or she has at least a United States baccalaureate degree or its foreign equivalent and that at least such a degree is required for entry into that religious profession; and

c. That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but may not be limited to evidence establishing that the alien is a monk, nun, or religious brother or that the type of work to be done relates to a traditional religious function.

4. Evidence that arrangements have been made, if any, for remuneration for services to be rendered by the alien including the amount and source of any salary, description of any other types of remuneration to be received (including housing, food, clothing, any other benefits to which a monetary value may be affixed), and a statement whether such remuneration shall be in exchange for services rendered.

5. The name and location of the specific organizational unit of the religious organization for which the alien will be performing services within the United States.

6. If the alien has worked in a nonministerial and nonprofessional capacity for a bona fide organization which is affiliated with a religious denomination, the existence of the affiliation.

7. Any appropriate additional evidence which may relate to the religious organization, the alien, or the affiliated organization. Such documentation may include, but need not be limited to, diplomas, degrees, financial statements, or certificates of ordination.

C. Where To File. Any person, including the alien, may file a petition for a "C special immigrant" visa. Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, is to be filed with the INS Service Center having jurisdiction over the employing organization.

D. When To File. Plan in advance. The Service Centers may vary in processing times from two (2) weeks to two (2) months. The United States Consulate in Vancouver, B.C., Canada will take approximately two (2) months to process an application for a "C special immigrant" visa. It has had no applicants to the date of this article. Other U.S. Consulates will obviously vary in time periods, so one should check with the U.S. Consulate that has jurisdiction in order to determine how long the application will take to process.

E. Fee. The INS filing fee for Form I-360 is \$75. The U.S. Consulate charges the same fee for a "C special immigrant" visa as for other immigrant visas.

F. Admission. As with other immigrant visas the applicant has four (4) months after being granted a visa by a U.S. Consulate in which to make entry into the United States as a permanent resident.

G. Sunset Provisions. The Immigration Act of 1990 provided for an automatic elimination of visas beginning October 1, 1994 for those people who would be coming to the U.S. to work for the organization at the request of the organization in a professional capacity, in a religious vocation or occupation or for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in § 501(c)(3) of the Internal Revenue Code of (1986) at the request of the organization in a religious vocation or occupation. Thus, beginning October 1, 1994, unless Congress extends these provisions, the only religious workers who will qualify for the "C special immigrant" category are those persons who are seeking to enter the United States solely for the purpose of carrying on the vocation of a minister of a religious denomination and otherwise qualify under the "C special immigrant" provisions. If the statutory provisions for religious workers are not reenacted by Congress before October 1, 1994, the Department of Labor intends to reconsider the elimination of Group III of Schedule A. (See comments to the Interim Final Rule promulgated by the Department of Labor entitled Labor Certification Process for Permanent Employment of Aliens in the United States; Implementation of the Immigration Act of 1990, published at 56 FR 54920 (October 22, 1991) at page 54923.

III. NONIMMIGRANT R VISA

The Immigration Act of 1990 also established a nonimmigrant classification for religious workers which became effective on October 1, 1991. The Immigration and Naturalization Service adopted its final rule regarding the new R visa, effective as of December 27, 1991, 56 FR 66965.

A. Requirements. The requirements for the nonimmigrant R visa are the same as the "C special immigrant" visa except that the beneficiary of an "R" visa does not have to show that he or she, for the two years immediately preceding the time of application or admission, has carried on such vocation, professional work, or other work.

B. Where To File. The religious worker may make an application with the United States Consular Office or if visa exempt to an immigration officer at the United States Port of Entry. If the alien is in the United States and is in legal status, a petition for change of status (Form I-129, Petition for nonimmigrant Worker) may be filed with the INS Service Center having jurisdiction over the employing organization.

C. When To File. The alien is required to have two (2) years of membership in the religious denomination immediately prior to the application for the nonimmigrant visa or application for admission into the United States. Thus, any time this requirement has been satisfied, an application may be made.

D. Fee. The U.S. Consulate charges for a nonimmigrant "R" visa on a reciprocal basis. The Immigration and Naturalization Service charges \$70 which must accompany Form I-129 when it is filed to change nonimmigrant status, extend or amend the original R nonimmigrant status.

E. Initial Admission. The initial admission of a religious worker, spouse and unmarried children under twenty-one (21) years of age is not to exceed three (3) years. The Form I-94 for the religious worker is to be endorsed with the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. The admission symbol for the religious worker is to be R-1; the admission for the worker's spouse and children is to be R-2.

F. Extension of Stay. The organizational unit of the religious organization employing the nonimmigrant religious worker is to use Form I-129 for extensions of stay. An extension may be authorized for a period of up to two (2) years. The worker's total period of stay in the U.S. may not exceed five (5) years. The petition must be accompanied by a letter from an authorized official of the organizational unit confirming the worker's continuing eligibility

for classification as an R-1 nonimmigrant. An alien who has spent five (5) years in the United States under INA Sec. 101(a)(15)(R) may not be readmitted to the United States under the R visa classification unless the alien has resided and has been physically present outside of the United States for the immediate prior year, except for brief visits for business or pleasure. Such visits do not end the period during which an alien is considered to have resided and been physically present outside of the United States, the time spent during such visits does not count toward the one (1) year requirement.

G. Change of Employers. A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker is to file a Form I-129 with the appropriate fee with the service center having jurisdiction over the place of employment. The petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker. Any unauthorized change in employment to a new religious organization unit will constitute a failure to maintain status within the meaning of INA sec. 241(a)(1)(C)(i), 8 USC sec. 1251(a)(1)(c)(i).

H. Spouse and Children. The religious worker's spouse and unmarried children under twenty-one (21) years of age are entitled to the same nonimmigrant classification and length of stay as a religious worker, if the religious worker will be employed and residing primarily in the United States, and if the spouse and unmarried minor children are accompanying or following to join the religious worker in the United States. Neither the spouse nor any child may accept employment while in the United States in an R-2 nonimmigrant status.

I. R-Nonimmigrant Visa Flow Chart. Attached to this article is a copy of the (INS) Northern Service Center's flow chart for "R" nonimmigrant visa petitions. In compiling the documentation for the petition it would be helpful to INS if the documentation is organized in the order that the questions are asked on the flow chart. This will increase the possibilities that all of your documentation for each issue will not be missed during the review.

IV. DIFFERENCES BETWEEN "C SPECIAL IMMIGRANT AND "R" NONIMMIGRANT VISA

A. The "C special immigrant" visa requires two years of previous religious work experience whereas the "R" nonimmigrant visa does not require such experience.

B. There will be no "C special immigrant" visas for religious workers except for ministers, issued after October 1, 1994.

C. The petition for the "C Special Immigrant" visa must be filed with the INS, whereas the application for an "R" nonimmigrant visa may be filed at the U.S. Consulate, port of entry, if visa exempt, or with the INS Service Center.

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R - NONIMMIGRANT FLOW CHART

Note: A petition approval is not required for initial entrance in R classification. However, a petition is required for an extension in R classification and a petition is required if the beneficiary is already in the U.S. in R classification and will be changing or adding employers. Also, only membership, not experience, is required for eligibility.



