**Effective Advocacy for Religious Workers**

*by Joel Pfeffer, Michelle L. Lazerow, Mary M. O’Leary, and Elizabeth Rompf Bruen*

*updated by Joel Pfeffer, Cliff Rosenthal, and Michael Runde*

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**Joel Pfeffer** is a partner of the Pittsburgh law firm of Meyer, Unkovic & Scott LLP. A 1985 graduate of the University of Pittsburgh School of Law, he practices in the areas of immigration, nationality, and corporate law. Mr. Pfeffer is active in AILA and has served as a member of the Religious Worker Committee, the Finance Committee, and as speaker and Chapter Chair.

**Cliff Rosenthal** specializes in the business, entertainment and family immigration law field with the Wolfsdorf Immigration Law Group. He is the former Chair of AILA’s Religious Worker Committee and currently serves as a member of AILA’s Health Care Professionals and Physicians Committee. He is listed in *Who’s Who Legal in Corporate Immigration*.

**Michael C. Runde** practices with Hochstatter, McCarthy, Rivas & Runde, S.C. Mr. Runde is past Chair of AILA’s Wisconsin Chapter and has served on a number of AILA committees. His practice is concentrated in employment immigration, with an emphasis on religious worker matters. He has participated as faculty on religious worker panels at AILA conferences. He is a past member of the AILA Religious Worker Committee. Mr. Runde is listed in *Best Lawyers of America, Super Lawyers, and Who’s Who Legal in Corporate Immigration*.

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On November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) issued new regulations implementing changes to the way immigration petitions for religious workers are adjudicated. The purpose of these changes was outlined by USCIS in its introduction when it stated, “USCIS is implementing [these] requirements … to allow the federal government, as well as religious organizations, to better detect and deter fraud or other abuses of the religious worker program without compromising the many contributions made by nonimmigrant and immigrant religious workers to religious organizations in the United States.”

Representing religious workers and organizations in this dubious environment presents challenges; however, careful case

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**Joel Pfeffer** is a partner of the Pittsburgh law firm of Meyer, Unkovic & Scott LLP. He practices in the areas of immigration, nationality, and corporate law. Mr. Pfeffer is active in AILA and has served as a member of the Religious Worker Committee, the Finance Committee, and as speaker and chapter chair.

**Michelle L. Lazerow** practices immigration law in the Washington, D.C., metropolitan area, primarily in the areas of business, family, and naturalization. She has served on numerous AILA liaison committees on both local and national levels and on numerous conference committees as chair, co-chair, and committee member. She has participated as a panelist on a large variety of immigration issues in conferences nationwide. Ms. Lazerow served six years on the board of the American Immigration Law Foundation, as chair of the Annual Immigrant Achievement Awards (D.C.) for 11 years, and as chair of the Immigrant Achievement Awards (Annual Conference, Utah). Ms. Lazerow graduated with a law degree and a postgraduate degree in corporate law from University of the Witwatersrand, Johannesburg, South Africa, and holds an LL.M. from George Washington University, Washington, D.C.

**Mary M. O’Leary** is the principal in the Law Office of Mary O’Leary. Ms. O’Leary is a 1999 graduate of DePaul University College of Law and was admitted to the Illinois Bar in November 1999. She earned an M.A. in Latin American Studies from the University of Chicago in 1992 and a B.A. from Alma College in 1991. Ms. O’Leary has served the immigration bar on numerous committees and is a frequent speaker on a variety of immigration law topics, presenting to professional and community organizations. Ms. O’Leary has a general immigration law practice.

**Elizabeth Rompf Bruen** is an immigration attorney with Scott D. Pollock and Associates, P.C., in Chicago. Ms. Rompf Bruen represents clients in all areas of immigration law and was named a Rising Star in immigration law by Super Lawyers. She is an active member of AILA and currently chairs the Chicago Chapter’s liaison committee with the Executive Office of Immigration Review. Ms. Rompf Bruen graduated with honors from DePaul College of Law in Chicago and the University of Notre Dame in Notre Dame, Indiana.

The authors wish to thank Carlos Ortiz-Miranda for his thoughtful suggestions regarding this article.

1 See Special Immigrant and Nonimmigrant Religious Workers; Special Immigrant Nonminister Religious Worker Program Act; Final Rule and Notice, 73 Fed. Reg. 72277 (Nov. 26, 2008) and published on AILA InfoNet at Doc. No. 08112230 (posted Nov. 22, 2008).
planning, detail-oriented preparation, thorough documentation, and thoughtful advice throughout the process should alleviate USCIS’s fraud concerns, effectuate successful adjudications for immigration attorneys’ clients, and serve as constructive advocacy for future religious workers and organizations.

CASE-PLANNING AND PREPARATION

Clear documentation of each element of the statute and regulations establishes the nature of the petitioning organization and the beneficiary’s qualifications. USCIS provides document checklists on its website with specific examples of evidence it finds appropriate to establish the required elements.²

The Employer

Tax-exempt Status

USCIS, in comments to the November 26, 2008, final rule, stated that it viewed the determination letter to be a “valuable fraud deterrent” that “provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.”³ Additionally, the regulations make clear that only an Internal Revenue Service (IRS) determination letter identifying the organization as a nonprofit organization under Internal Revenue Code (IRC) §501(c)(3) is acceptable; a tax-exempt determination under IRC §501(d), 26 USC §501(d), will not qualify an organization to file nonimmigrant and immigrant petitions for religious workers.⁴ USCIS acknowledges that determination letters do not expire; it will accept determination letters from any date, but may seek more recent evidence to confirm that the exemption is still valid. Therefore, where the petitioning organization has an IRS determination letter with an older date, it is wise to include some more recent evidence of tax-exempt status, such as filings with the IRS, to maintain tax-exempt status. Moreover, if you have any question whether the organization’s tax-exempt status is still valid, you may refer to IRS Publication 78 to verify that the organization is still listed as a tax-exempt organization.⁵ USCIS states that it is important to establish the nexus between the petitioning organizations and the beneficiary’s employee location to ensure that the location where the beneficiary will work is part of the petitioner’s organization. Tax exempt status of the petitioning organization and the beneficiary’s location is one of the indications to establish such connection.⁶

Practice Pointer: Obtain the employer’s federal employer identification number and a determination letter from the IRS verifying the tax-exempt status of the petitioning religious organization under Internal Revenue Code §501(c)(3), 26 USC §501(c)(3).

Practice Pointer: Catholic organizations have a unique mechanism to demonstrate both their tax-exempt status and the organization’s membership in the denomination. Since 1946, the IRS has annually issued a letter to the U.S. Conference of Catholic Bishops regarding its group ruling. The group ruling letter means that any organization listed in the most recent edition of the Official Catholic Directory is covered by the group’s tax-exempt ruling.⁷ Submission of a copy of the most recent version of the IRS group ruling letter along with a copy of relevant page of the Official Catholic Directory is sufficient to demonstrate tax-exempt status and membership in the denomination. The Official Catholic Directory has a U.S. directory and an international directory—the latter listing dioceses throughout the world—that can be helpful in documenting membership in the worldwide Catholic Church.

² See www.uscis.gov/files/form/m-737.pdf. In addition, questionnaires, such as the attached, assist employers and beneficiaries in gathering required information and documentation.
⁴ The regulations note that if an organization is tax exempt under IRC §501(d) rather than §501(c)(3), the organization cannot use the R-1 program, but other nonimmigrant visa categories under the INA may be appropriate.
⁷ Information regarding the Group Ruling can be found at: www.usccb.org/ogc/GroupRulingFAQ.pdf. Additionally, AILA member Carlos Ortiz-Miranda of the U.S. Conference of Catholic Bishop’s Legal Department is available for questions regarding the Group Ruling.
**Practice Pointer:** At times the petitioner’s current address will differ from the address listed on the organization’s IRS determination letter. This occurs when the petitioner has moved to a new address or used an agent to file for its tax-exempt status. In either scenario, it is prudent for the petitioner to contact the IRS and notify the agency of its new address. The IRS will then send a letter confirming the new address. Both this letter and the original IRS determination letter should be submitted to USCIS to satisfy the tax-exempt status requirement. If the petitioner has multiple locations evidence of the relationship between the central location and the location of employment should be submitted.

**Denomination**

The employer must also demonstrate evidence of membership in a specific denomination. Denomination is defined as “a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following: (a) a recognized common creed or statement of faith shared among the denomination’s members; (b) a common form of worship; (c) a common formal code of doctrine and discipline; (d) common religious services and ceremonies; (e) common established places of religious worship or religious congregations; or (f) comparable indicia of a bona fide religious denomination.”

This definition allows religious organizations that lack a common organizational structure or governing hierarchy with other churches to serve as petitioners. From comments to the final rule, the new regulations appear to require a demonstration of the individual organization’s internal governing or organizational structure while still requiring that the organization share a common creed with other churches.

**Practice Pointer:** Work with the petitioning organization to define “denomination” carefully. Both Forms I-129 and I-360 include a “Religious Denomination Certification” that must be signed by the denominational authority. The authors recommend that this certificate and the petition itself, where feasible, be signed by the highest authority possible within the denomination (e.g., bishop or chancellor) and that the practitioner include documentation or an organizational chart demonstrating the position of the individual who signed the certification on behalf of the denomination and his or her relationship to the individual church or location where the beneficiary will be assigned.

**Practice Pointer:** Where a common governing authority is lacking, detail carefully in the petitioner’s letter of support how the petitioner’s creed or beliefs relate to other churches. Even where there is no common governing association, in order to document the common creed, provide documentation of association with churches of similar creeds. Such documentation might include: (a) ministerial conferences or continuing

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8 8 CFR §§204.5(m)(5) and 214.2(r)(3).


10 Note that the plain language of both 8 CFR §§204.5(m)(5)(i)–(iii) and 214.2(r)(9)(ii) require the Religious Denomination Certificate where the petitioner is a bona fide organization affiliated with a religious denomination if the organization was granted tax-exempt status under §501(c)(3), categorized as something other than a religious organization (as opposed to 8 CFR §§204.5(m)(5)(i)–(ii) and 214.2(r)(9)(ii)–(iii), which relate to organizations with a currently valid IRS determination letter that the organization itself is tax exempt as a religious organization or that it is tax exempt under a group ruling.) Although the Religious Denomination Certification is not technically required of organizations that have their own tax-exempt status or are included in a group ruling, in practice, practitioners have tended to submit the Religious Denomination Certification for all petitioning organizations, and U.S. Citizenship and Immigration Services (USCIS) adjudicators seem to expect that it will be submitted with each petition.

11 In a recent case (Matter of [name not provided], WAC 0709753288 (AAO May 22, 2009)), the Administrative Appeals Office (AAO) applied the final rule to a case filed before its publication, consistent with the preamble of the final rule. The AAO affirmed a service center’s decision that “Pentecostal” is not a religious denomination, since the term describes a number of distinct and independent Christian denominations. Absent the denominational relationship between the petitioner and the beneficiary’s foreign employee, the petitioning organization could not show that the beneficiary met the required two-year membership in the denomination required for a religious worker. The AAO held that the petitioner failed to establish that the two churches share a common type of ecclesiastical government. Unfortunately, the service center’s decision relied heavily on the prior regulation and the petitioner’s failure to establish an institutional relationship or common governing body. The AAO decision only cites the new regulation and, without analysis, affirms the service center’s decision on the basis that the record fails to show that the two churches have a common type of ecclesiastical government.
education programs for clergy; (b) religious educator training conferences or programs; (c) retreats or spiritual development conferences for clergy, religious professionals and lay persons; (d) youth group exchanges or gatherings; and (e) administrative associations to pool resources for, e.g., health insurance, liability insurance, etc. among independent churches of similar creeds.

Even if a church believes in the principle of nondenominational congregational government, it might have participated in these types of associations for support and sharing of resources. An inquiry as to whether a religious organization has participated in any of these types of relationships might help define and document the “denomination” of the nondenominational church.

The Employer as a Petitioner of Religious Workers

Forms I-129 and I-360 require the employer to provide the number of members of its denomination. Current regulations also require petitioners to provide figures on the number of Forms I-129 (R-1 supplement) and I-360 petitions filed within the past five years and the number of employees currently employed pursuant to R-1 status or based on I-360 Special Immigrant petitions. 12

Practice Pointer: Be specific about the number of members, explaining the source or categorization of the figure (e.g., the specific institution where the alien will be employed, the larger regional denominational organization, the worldwide religious organization, and so on).

Practice Pointer: It is often helpful for large organizations to centralize the handling of religious worker petitions to ascertain these required quantities. When one attorney or law firm files all the immigration petitions for a particular religious group or denomination, the lawyer may become that point person.

Practice Pointer: USCIS fraud investigators in a particular region become familiar with organizations that regularly file religious worker petitions. If the organization deviates from its regular filing pattern (e.g., a different person is signing the forms), USCIS fraud investigators may call or conduct a site visit.

The Job Offered

Terms of Employment

The R-1 or Special Immigrant petition requires a clear job description that should include the number of hours the beneficiary will work. The regulations require an R-1 religious worker to work at least 20 hours per week13 and a special immigrant religious worker to work on a full-time basis (at least 35 hours per week).14 The petition should also establish the location where the religious worker will be assigned.

Practice Pointer: Name as many sites as possible where the beneficiary will be employed so that USCIS can conduct its required site visits.

Finally, establish the compensation that will be provided to the religious worker, including salary and any nonmonetary compensation. If the petitioner anticipates that the alien will be self supporting, the regulations provide specific guidelines about when such a situation is acceptable.15

The Job Offered Qualifies as “Religious Work”

The employer must demonstrate that the job offered qualifies for R-1 status pursuant to the Immigration and Nationality Act (INA) §101(a)(15)(R) and 8 CFR §214.2(r), or for Special Immigrant Religious Worker status pursuant to 8 CFR §204.5(m). Specify whether the beneficiary is seeking admission as a minister16 or because of religious vocation17 or religious occupation.18

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12 The number of petitions filed includes only petitions filed with USCIS, not R-1 visa applications submitted to U.S. consulates abroad or to ports of entry under prior regulations.
13 8 CFR §214.2(r)(1)(ii).
14 8 CFR §204.5(m)(7)(vii).
15 8 CFR §214.2(r)(11)(ii).
16 Minister means an individual who: (a) is fully authorized by a religious denomination, and fully trained according to the denomination’s standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination; (b) is not a lay preacher or a person not authorized to perform duties usually performed by clergy; (c) performs activities with a rational relationship to the religious calling of the minister; and (d) works solely as a
An alien seeking admission as a minister should provide his or her certificate of ordination or similar documents, as well as evidence of any course of prescribed theological education at an accredited theological institution that is normally required by the particular petitioning denomination. Transcripts, curriculum, or other documentation are suggested by USCIS on its Form M-737 Optional Checklist. Where a denomination does not prescribe a specific course of education, you will need to document the denomination’s requirements for ordination to minister, explain the duties that are authorized by virtue of ordination and the denomination’s levels of ordination, if any. Of course, the beneficiary must then provide evidence that he or she has completed the requisite steps for ordination into the denomination. The evidentiary requirements listed on the M-737 for ministers in denominations without a prescribed educational course are good guidelines for documenting the qualifications of foreign nationals seeking admission based on a religious vocation or occupation. Documentation of the steps needed to achieve the required education or spiritual training will be needed (e.g., for those seeking admission based on vocation, a letter from a religious superior of the religious order) and the beneficiary will also need to obtain documentation that he or she has completed each of the requisite steps.

The Beneficiary

The beneficiary of the I-129 Nonimmigrant Religious Worker petition for R-1 status will be required to show that he or she has been a member of the denomination for at least two years. Documenting this element is somewhat easier in denominations in which membership is marked with ceremonies at specific phases of life and such ceremonies are documented through certificates or otherwise recorded on paper. Where a religious worker has “belonged” to a given religion since birth or early in life and no such certificates are typically given, the authors’ experience has been that a detailed letter from a member of the clergy of his denomination will usually suffice. A statement from the petitioner alone might be sufficient, but such a statement should reference the steps taken to verify the beneficiary’s membership in the denomination outside the United States. Where the religious worker has received formal religious training in denominational institutions, certificates, diplomas, or other documents verifying that training can also provide circumstantial evidence of membership in the denomination.

If a foreign national is coming to the United States in R-1 status from the outset, it is helpful, if possible, to request that he or she obtain confirmation of past experiences in the home country before departing for the United States. The confirmation will then be available once the foreign national has completed two years of experience as a religious worker in the United States and begins the process of filing Form I-360.

In addition to demonstrating the principal foreign national’s credentials and qualifications, and obtaining the basic biographic information required for the principal beneficiary and his or her derivatives, it is vital also to obtain a detailed immigration history for each member of the family, including:

- All U.S. visas ever issued to the foreign national and each family member;
- I-94 cards ever issued to the foreign national and each family member and still in their possession;

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17 Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of vocations include nuns, monks, and religious brothers and sisters. 8 CFR §214.2(r)(3).

18 Religious occupation means an occupation that meets all of the following requirements: (a) the duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination; (b) the duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination; (c) the duties do not include positions which are primarily administrative or support, such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible; and (d) religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status. 8 CFR §214.2(r)(3).

EFFECTIVE ADVOCACY FOR RELIGIOUS WORKERS

- Approval notices ever issued to the foreign national and each family member;
- All stamps placed in passports for the foreign national and each family member;
- All prior petitions ever filed for the foreign national and each family member; and
- For R-1 extensions and I-360s particularly: tax returns, including all W-2 and 1099 forms.

Preparing the Submission

A petition for a nonimmigrant religious worker is filed on Form I-129 with the R supplement (which includes the attestations required by 8 CFR §214.2(r)(8)). The current filing fee is $325. All R-1 petitions are currently processed at the California Service Center, regardless of where the foreign national will be employed. In addition to the filing fee, Forms G-28, and I-129 and the R supplement, the petition should include:

- A letter from the petitioner;
- Information showing the petitioner’s membership in a denomination;
- Information showing the denomination’s requirements for entry into the position (e.g., requirements for ordination, profession of vows, or the religious occupation);
- Documentation of the employer’s tax-exempt status updated if necessary to the petitioner’s current address;
- Information regarding the salary or nonmonetary compensation to be provided to the foreign national;
- Evidence of ability to pay (e.g., IRS Form 990 filed by petitioner, membership list, employee payroll, payroll tax records);
- Photographs of the location of employment and evidence that the employment location is occupied by the petitioner (e.g., deed, mortgage, utility invoices, licenses and other municipal documents);
- Documentation of the foreign national’s qualifications for the position as minister or in a religious vocation or occupation; and
- Documentation of the foreign national’s immigration history (if any).

Premium Processing

Premium processing is available for nonimmigrant religious worker petitions (not for Form I-360 Special Immigrant petitions). Premium processing is available where the petitioner has successfully completed a site visit at the location where the beneficiary will be employed. Upon receipt of a Form I-907 for an R-1 petition, USCIS will search its system to determine whether a successful site inspection has occurred. If so, it will accept the Form I-907 and the corresponding fee; if not, the request and fee will be returned to the petitioner. USCIS recommends including a Form I-797 approval notice for any prior petition that prompted the earlier site visit, to assist the service center in determining whether a successful site inspection has occurred.20 Current USCIS policy appears to reject premium processing requests if a site visit at the petitioner’s location has been waived; i.e. a previous case has been approved without a site visit.

SITE VISITS

USCIS is authorized to conduct on-site inspections of petitioning organizations in order to combat fraud.21 Site visits are conducted by the Fraud Detection and National Security (FDNS) unit of the local USCIS field office. All fraud inspectors use an audit compliance sheet to conduct their investigation; it sets out what questions will be asked and what locations and documentation will be reviewed. Use of the Audit Compliance Sheet assures consistency among site investigations and assures contemplation of all attestations required by religious worker petitions. Site visits may include a tour of the religious organization’s facility, inspection of

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20 Published on AILA InfoNet at Doc No. 09072067 (posted July 20, 2009).
21 8 CFR §§204.5(m)(12) and 214.2(r)(16).
the employer’s records, and interviewing of officials or personnel at the place of employment. It is important that advocates be available to petitioners throughout the process.

FDNS claims that site visits are conducted within 90 days of a referral from the adjuster. A site visit cannot be requested in advance of or subsequent to petition. There is no set validity for site visits.22

**Practice Pointer:** Site visits may be scheduled or unannounced, making advanced preparation essential. The petition should include information that explains petitioner’s hours of operation, contact information and any information that would assist the inspector in locating the petitioner’s premises. Provide clients with written guidelines regarding site visits and explain who USCIS officers may interview, who should be notified of the pending petition, and which senior person in the organization should be notified when the site inspector arrives.

**Practice Pointer:** The regulations do not set timeframes for completion of site visits. No official protocol exists for requesting a site visit at this time. Although the California Service Center (CSC) is currently responsible for contacting the local USCIS field office to complete the site visit, some advocates report that if a site visit is not timely completed it is helpful to attend an Infopass appointment at the local USCIS field office to determine if the CSC has contacted the office to initiate the site visit, as these inquiries may prompt USCIS to take action.

**Practice Pointer:** Sometimes USCIS utilizes “Google Earth” or “Google Search” to investigate the petitioner’s location. Prior to submitting a religious worker petition, advocates should conduct similar research to ensure the online information is accurate and complete. At times, if the petitioner’s website is detailed and its information is consistent with the materials submitted with the religious worker petition, USCIS may deem a physical site visit unnecessary.

**RESPONDING TO A REQUEST FOR EVIDENCE**

Responding to USCIS Requests for Evidence (RFEs) requires careful reading, patience, creativity, and attention to detail. A thorough, organized and complete RFE response should overcome USCIS concerns and result in the successful adjudication of the petition.

**Practice Pointer:** Ensure timely response to the RFE by immediately calendaring the due date in your case management system and notifying the client of the deadline.23

**Practice Pointer:** Reference the statutory and regulatory requirements while reviewing the RFE. USCIS checklist is particularly useful.24

**Practice Pointer:** Make two copies of the RFE. Place the original, which will be submitted to USCIS with the RFE response, and one copy, in the file. Read the second copy thoroughly marking comments and ideas directly on the request and highlighting the information and evidence USCIS requests.

**Practice Pointer:** Create an outline of your response. Organize your response in the same order in which USCIS requested the information in the RFE. If the USCIS officer inadvertently requests information or documentation that is irrelevant to the petition, respond respectfully, explaining why the information is not required, and citing any relevant authority or guidance on the subject.

**Practice Pointer:** It is useful, especially when responding to a lengthy RFE, to quote the exact language used by the officer in the RFE and respond accordingly.

**Practice Pointer:** If primary evidence is not available, work with your clients to assess carefully what secondary evidence can be used to overcome USCIS’s concerns. A good example in the religious worker

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22 Questions and Answers Religious Workers National Stakeholder Engagement July 14, 2011 and July 26, 2011,

23 USCIS issued the final rule, effective July 18, 2007, giving adjudicators flexibility as to the time given to respond to the RFE. Neufeld Memo, June 1, 2007, HQ 70/11/70/12, Removal of the Standardized Request for Evidence Processing Timeframe.

context is documenting the petitioner’s ability to compensate the beneficiary when the petitioner does not pay a salary or issue a W-2 form. USCIS generally uses salary evidence to establish the regulations compensation requirements, and where the beneficiary receives a minimal salary, USCIS may question the petitioner’s ability to compensate the beneficiary, whether the beneficiary will become a public charge, and/or whether the beneficiary will actually meet the minimum number of work hours required by the regulations. In these circumstances, representatives should speak with the petitioner about what benefits the organization will provide to the beneficiary in addition to salary. If one benefit is housing, include photographs of the house and proof of ownership or rental with the RFE response. If a benefit is use of a car that is insured, include title and insurance documentation with the response. If comprehensive health coverage is extended to the beneficiary, include copies of the policies. Have a certified public accountant provide a letter setting out the value of these benefits. By providing this type of secondary evidence, petitioners should be able to satisfy the statutory and regulatory requirements.

Practice Pointer: When compiling the RFE response, place the original RFE on top followed by the attorney transmittal letter. Address the RFE to the specific post office box number noted on the RFE. Prepare an index of documents and organize evidence in the same order in which it is requested in the RFE. If USCIS requests documents or evidence included in the original submission, respectfully reference the appropriate tab or page in the original submission; alternatively, indicate that the requested materials were included in the original submission and include additional copies of the requested evidence in the RFE response.

CASE APPROVAL AND VISA ISSUANCE

When a Form I-129 petition is approved, USCIS issues a Form I-797 Approval Notice authorizing employment for a period of 30 months, provided that the total period of time spent in R-1 status will not exceed five years. The Form I-797 is presented to the U.S. consulate abroad, or, in the case of Canadian citizens, at the port of entry. The process follows standard procedures for issuance of a visa typically available on consulate websites. The process includes the online filing of Form DS-160, payment of the applicable fee, and a consular appointment. Petition approval does not guarantee visa issuance and the beneficiary should be prepared to establish eligibility for the visa at the consular interview.

Practice Pointer: At the consular interview, the beneficiary should be familiar with the details of the position and supporting materials submitted to USCIS. The consular officer may question the beneficiary about the nature of his or her religious work, as well as the beneficiary’s experience and qualifications to fill the religious worker position. The beneficiary should also have a recent letter from the petitioner confirming the offer of employment.

The consular officer may address the issue of immigrant intent. In that event, the beneficiary will need to overcome the presumption created by INA §214(b)—every nonimmigrant is presumed to be an immigrant until established otherwise. Normally, overcoming the presumption requires that the beneficiary have an unrelinquished foreign residence. However, in the case of religious workers, there is no requirement that applicants for R status establish that they have a residence in a foreign country which they have no intention of abandoning. Rather, it should be sufficient for the beneficiary to state an intention to depart the United States when the R-1 status ends, and in no event for a period to exceed five years.

25 If the petition is denied, appeal of the decision is available under 8 CFR §103.3.
26 INA §101(a)(15)(R)(ii), 8 CFR §214.2(r)(5).
27 8 CFR §212.1(a)(1).
28 Each post procedure can be found in AILA’s The Consular Practice Handbook (AILA 2010–11 Ed.) or on DOS’s website at http://usembassy.state.gov. Post procedures frequently change so consult the appropriate website immediately prior to the consular appointment.
29 8 CFR §214.2(r)(15); 9 FAM 41.58 N2. The standard for satisfaction of the requirements of INA §214(b) is the same as the more lenient standard applied to E-1 and E-2 nonimmigrants.
The visa will normally be issued for the period of validity of the approved petition, unless the country’s Department of State reciprocity schedule provides for a shorter period of time. In that case, the expiration of the visa will occur earlier than the petition expiration date (PED).

At the port of entry, the beneficiary should be admitted to the United States for the full validity period approved by USCIS on the Form I-797. This period should conform to the PED noted on the visa, and the Customs and Border Protection (CBP) officer should indicate the PED as the date of expiration of the I-94. Notwithstanding regulatory limits on admissions, practitioners still receive reports of admissions for three years, in accordance with policy under prior regulations.

Practice Pointer: Although beneficiaries in possession of a valid R-1 visa normally are not required to present additional documentation to CBP to establish eligibility, clients should be prepared to explain the nature of the religious work and their qualifications and experience at the port of entry. They should also be advised of the appropriate admission dates and should be counseled to check the I-94 validity dates at primary inspection to be sure that the admission is valid to the PED and not to the visa expiration date. Deferred inspection procedures can be utilized to correct CBP errors. Practitioners should be cautious of relying on admissions that exceed time specified in the regulations.

Visas issued prior to November 26, 2008, which are otherwise still valid, whether based on an approved R-1 petition or not, may still be used for admission for the duration of the visa’s validity. In some cases, the pre-November 26, 2008, visas were issued for five years and may still have more than two years of validity.

Practice Pointer: Visas issued prior to the effective date of the religious worker final rule will likely not contain PEDs. The validity date of the visa controls its use for application for admission to the United States at the port of entry. The period of admission is at the discretion of the CBP officer. USCIS has stated that individuals who had been issued an R-1 visa under previous regulations should be admitted for the duration of the visa. In limiting the period of admission to the duration of the validity of the visa, USCIS suggests a departure from standard CBP practice for admission in nonimmigrant categories that do not require a USCIS petition approval.

Canadians who are visa exempt present the Form I-797 Approval Notice at the port of entry. Prior to November 26, 2008, visa-exempt beneficiaries were issued an I-94 valid for multiple entries. Under prior regulation, the I-94 could be valid for up to three years. Those I-94s that are still valid may be used for entry to the United States by visa-exempt beneficiaries who are traveling to and from contiguous U.S. territories for less than 30 days. Visa-exempt beneficiaries traveling to contiguous territories for more than 30 days or beyond contiguous territories are required to present a Form I-797 Approval Notice to be admitted to the United States.

MAINTENANCE OF STATUS

Religious worker employment authorization is employer specific and change of employer or concurrent employment with a new employer will necessitate a new Form I-129 petition. However, the employee can work for more than one employer at the same time. It is the authors’ experience that religious workers are

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30 In its reciprocity schedule, DOS sets forth the maximum length of visas, whether they may be single or multiple entry, and fees for each country. The schedule is found at http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html. These rules are usually based on restrictions the applicant’s country of citizenship imposes on Americans traveling to that country.

31 The petition expiration date is noted in the lower right corner of the visa as the PED.

32 For CBP policy on periods of admission under the prior regulations, see “CBP Memorandum on Guidance on Period of Admissions for Religious Workers (R-1) (Oct. 14, 2004), published on AILA InfoNet at Doc. No. 05040469 (posted Apr. 4, 2005).


34 See 22 CFR §41.112(d).

35 Arguably, admissions for three year, but not more than the five year limit, in accordance with policy under prior regulations are appropriate in this case.

36 8 CFR §214.2(t)(13).
more prone than foreign nationals in other nonimmigrant employment categories to violate their nonimmigrant status. Accordingly, where possible it is important to advise the foreign national and employer from the outset that an R-1 religious worker may be employed only by the petitioning employer, and that he or she cannot receive compensation in exchange for any other type of productive activity from a U.S. employer unless USCIS has authorized such employment in a separate, concurrent petition. If counsel does not have the opportunity to provide such advice early in the foreign national’s stay, it is important to review carefully the beneficiary’s immigration history and history of employment in the United States before filing any petitions.37

**Practice Pointer:** In addition to advising both employers and beneficiaries that their employment pursuant to R-1 status is valid only for employment with the petitioner, it is good practice to request annually copies of all Form W-2s and 1099 forms to ensure that beneficiaries have not inadvertently engaged in unauthorized employment and to ensure that employers are compensating the foreign national in accordance with assertions made in the initial petition. Such a practice will alert the foreign national to avoid the accrual of more than 180 days of status violation or unauthorized employment, which would render him or her ineligible for adjustment of status pursuant to INA §245(c) and ineligible for the exception provided under INA §245(k). It is also good practice to include copies of these documents with the R-1 extension and I-360 petition to document maintenance of status. Moreover, tax documents are now required in documenting at the I-360 stage that the foreign national has two years of experience as a religious worker, which, if gained in the United States, must have been gained through authorized employment.38

**STRATEGIES FOR KEEPING THE BENEFICIARY IN THE UNITED STATES**

The petitioning organization may at any time file Form I-360 to have the beneficiary classified as a special immigrant religious worker. Form I-360 requires the same information and documentation as the R-1 petition with the addition of evidence of the beneficiary’s two years of experience as a religious worker39 and evidence of how the petitioner intends to compensate the beneficiary.40 The Form I-360 contains the petitioner’s attestations relating to the level of compensation, the source of the funds used to compensate the beneficiary, and the full-time nature of the position. If the beneficiary was employed in the United States during the two years immediately preceding the filing of the Form I-360 and received salaried compensation, the Form I-360 must be accompanied by IRS documentation, such as a Form W-2 or copies of income tax returns.41 The regulation outlines the evidence required to establish that the beneficiary received nonsalary compensation or received no salary during those two years.42

**Practice Pointer:** The Form I-360 petition should be accompanied by all available IRS documentation to support the petitioner’s ability to pay and the beneficiary’s two years of experience in the United States.43 The beneficiary’s W-2 statements may be submitted to satisfy both the two-year experience requirement and the ability to pay requirement. If available, documents such as the IRS Form 990, audited financial statements, bank statements, brokerage statements and other similar documents, which may be certified by the petitioner’s officer, accountant, or counsel, should be submitted to establish evidence of how the petitioner

37 Pursuant to 8 CFR §248.1, a nonimmigrant may apply for a change of status if he or she “is continuing to maintain his or her nonimmigrant status.” A failure to maintain status, including failing to file for a change of status prior to the expiration of the prior period of authorized stay may be excused if: (1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances; (2) The alien has not otherwise violated his or her nonimmigrant status; (3) The alien remains a bona fide nonimmigrant; and (4) The alien is not the subject of removal proceedings under 8 CFR §240.

38 8 CFR §204.5(m)(11).

39 8 CFR §204.5(m)(11).

40 8 CFR §204.5(m)(10).

41 8 CFR §204.5(m)(11)(i).

42 8 CFR §204.5(m)(11)(ii)–(iii).

intends to compensate the beneficiary. When the compensation includes room and board, documentation that room and board will be provided, such as a lease, deed and photographs of the property should be provided. Evidence of R-1 status for the beneficiary for the two-year period prior to application must also be submitted if applicable.

An R-1 nonimmigrant may stay in the United States for up to five years. Unlike workers in the H-1B classification, R-1 religious workers may not extend this period based on an approved petition for special immigrant religious worker (Form I-360) or approved labor certification and I-140 petition. Similarly, R-1 religious workers may not recapture any time spent abroad as outlined above. It is therefore critical for an R-1 religious worker who wants to remain in the United States beyond the five-year limit to strategize for future permanent residence or other nonimmigrant status.

For a period of time, beneficiaries facing the end of the five-year limit were able to file a concurrent Form I-485 application for adjustment of status and a Form I-360, effectively permitting them to remain in the United States while the I-360 was pending. This opportunity was available following a permanent injunction issued by the district court in *Ruiz-Diaz v. United States* (W.D. Wash. 2009). From June 11, 2009, to November 8, 2010, the CIS accepted concurrently filed Form I-360 petitions and Form I-485 applications pursuant to the *Ruiz-Diaz* order. On October 13, 2010, the Ninth Circuit reversed the district court and vacated the injunction. As of November 8, 2010, USCIS modified its procedures and no longer accepts concurrent filings of Form I-360 petitions and Form I-485 applications. At this time, any I-485 application whose underlying basis is an I-360 petition for a special immigrant religious worker must be filed based on an approved Form I-360 petition.

Section 245(k) of the INA is applicable to I-360 religious worker petitions. This means that if an R-1 religious worker has overstayed his/her status or has accrued unauthorized employment of less than 180 days, he/she may still adjust status to permanent resident.

R-1 religious workers who are coming to the end of their five-year limit may consider other temporary classifications, such as H-1B or B-1/2, in order to remain in the United States until an I-360 petition is approved. Alternatively, the religious worker may leave the United States for a period of one year and then reapply for R-1 status for an additional five years. A traditional labor certification followed by a Form I-140 petition may also be an option for obtaining permanent status for the beneficiary. However, unless the position qualifies for EB-2 classification, it is unlikely, given the current quota limitations in EB-3 classification, that the beneficiary will be able to file Form I-485 for adjustment of status in a timely manner. Unlike H-1B, an R-1 may not extend status beyond the five-year limit based on a pending application for alien employment certification or an approved I-140 petition.

An H-1B petition would permit the R-1 religious worker to remain in the United States for an additional six years, assuming no prior H-1B stay. The limitation on the use of an H-1B petition for a religious worker is that the beneficiary might not have a college degree or the three-for-one equivalent of a degree recognized in the H-1B regulations. Additionally, the H-1B classification requires that the position be a specialty occupation, one that normally requires a college degree for entry. Because many religious worker positions are performed by persons without college degrees, the position might not qualify as a specialty occupation. Finally, the prevailing wage requirements of H-1B may put an H-1B petition out of financial reach of the

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44 INA §214.2(b)(1); 8 CFR §214.2(h)(6).
46 *Ruiz-Diaz v. U.S.* (9th Cir. No. 09-35734).
48 It is important to realize that the 180 days of unauthorized employment continues to toll once the adjustment of status has been filed. Therefore, it is essential to monitor unauthorized employment at least until the employment authorization document is received.
49 8 CFR §214.2(h)(4)(iii)(D)(5).
50 8 CFR §214.2(h)(4)(ii).
petitioner. The O*NET online wage library contains at least five classifications in religious work, including:
(a) clergy; (b) directors; (c) religious activities and education; (d) philosophy and religion teachers, post-secondary; and (e) directors, religious activities, and education.\(^5\) The O*NET prevailing wages for these categories should be considered carefully before the possibility of an H-1B petition is dismissed because of financial issues.\(^5\)

Another option for religious workers reaching their five-year limit is B nonimmigrant status. Members of a religious denomination may enter the United States in B status to do missionary work for the denomination, engage in charitable work, or serve as a minister on pulpit exchange or on evangelical tour.\(^5\) These options are limited in scope to individuals who are not remunerated in the United States and maintain a foreign residence that they do not intend to abandon. Each extension-of-stay application may be approved for one year.\(^5\) Clearly, if a Form I-360 has been filed, that would have to be disclosed to USCIS in connection with an application for change of status.

 practice pointer: A religious worker may consider an initial entry in B status as a means of delaying the start of the R-1 five-year time period. A B visa application or an application for entry or extension for religious or missionary work in B status must clearly explain how the applicant will be supported in the United States and the expected duration of the assignment. A written supporting letter from the religious organization or denomination is strongly recommended.

CONCLUSION

Religious workers and organizations are unique stakeholders in the immigration system. Effective advocates must understand the new regulations’ requirements and effectively communicate them to their clients; only then can a case plan be clearly developed and proper documentation produced and organized for submission to USCIS. Advocates must anticipate roadblocks to successful adjudication, warn their clients in advance of these issues, carefully oversee the preparation and adjudication of the case, and continue to monitor the beneficiary’s status after approval. If advocates take these steps, religious workers and their petitioners can overcome, and hopefully dispel, USCIS’ fraud concerns.

\(^{51}\) www.onetonline.org.

\(^{52}\) www.fldatacenter.com.

\(^{53}\) The Foreign Affairs Manual (FAM) contains several provisions for entry into the United States in B category for religious volunteers and missionaries who do not receive remuneration from a U.S. source. 9 FAM 41.31 N9.1.

\(^{54}\) 8 CFR §214.2(b)(1); USCIS Adjudicator’s Field Manual at ch. 30.2(c)(3)(D).
**QUESTIONNAIRE FOR RELIGIOUS WORKER PETITION**

Name of Petitioner/Employer: ______________________________

Name of Beneficiary: ________________________________

Information needed from Employer:

<table>
<thead>
<tr>
<th>Information needed from Employer</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal employer ID number (please provide evidence of tax-exempt status)</td>
<td></td>
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<tr>
<td>Name and title of contact person</td>
<td></td>
</tr>
<tr>
<td>Name and title of person signing documents on behalf of the organization/denomination</td>
<td></td>
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<tr>
<td>Alien’s job title</td>
<td></td>
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<tr>
<td>Detailed description of the alien’s proposed daily duties</td>
<td></td>
</tr>
<tr>
<td>Description of alien’s proposed/current salary and compensation</td>
<td>Salary:</td>
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<tr>
<td></td>
<td>Non-monetary compensation:</td>
</tr>
<tr>
<td>Proposed hours worked per week (must work at least 20 hours)</td>
<td>__hrs  PT / FT</td>
</tr>
<tr>
<td>Address(es) where alien will be employed (use separate sheet if needed)</td>
<td></td>
</tr>
<tr>
<td>Number of members of the petitioner</td>
<td></td>
</tr>
<tr>
<td>Number of employees working at the location where the alien will be employed. <em>(Please fill out table on attached sheet)</em></td>
<td></td>
</tr>
<tr>
<td>How many religious workers petitions have you filed within the past five years (either R-1 nonimmigrant or I-360 Special Immigrant petitions)?</td>
<td>1. R-1 ____________ 2. I-360 ____________</td>
</tr>
<tr>
<td>How many religious workers do you currently employ or have you employed within the past five years, pursuant to R-1 nonimmigrant or I-360 Special Immigrant Petitions?</td>
<td>1. R-1 ____________ 2. I-360 ____________</td>
</tr>
</tbody>
</table>
Provide the job title and a summary of the type of responsibilities of those employees who work at the location where the Alien will be employed. If additional space is needed, please use separate sheet of paper.

<table>
<thead>
<tr>
<th>Position</th>
<th>Summary of the Type of Responsibilities for That Position</th>
</tr>
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<tbody>
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<tr>
<td>Information needed from Beneficiary:</td>
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<tr>
<td>-------------------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Full legal name of beneficiary</strong></td>
<td>Family name(s): ____________________________</td>
</tr>
<tr>
<td></td>
<td>First name: ______________________________</td>
</tr>
<tr>
<td></td>
<td>Middle name: _____________________________</td>
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<tr>
<td><strong>Any other names used (including maiden name or spelling variations)</strong></td>
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<tr>
<td><strong>U.S. address</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Address outside the United States</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Date of birth (mm/dd/yyyy)</strong></td>
<td>Month: _______ Day: _______ Year: _______</td>
</tr>
<tr>
<td><strong>Place of birth</strong></td>
<td>City: ________________________________</td>
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<tr>
<td></td>
<td>Country: ____________________________</td>
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<tr>
<td><strong>Country of citizenship</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Gender</strong></td>
<td>Male ________ Female __________</td>
</tr>
<tr>
<td><strong>U.S. Social Security number (if any)</strong></td>
<td></td>
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<tr>
<td><strong>A# (if any)</strong></td>
<td></td>
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<tr>
<td><strong>Consulate or port of entry to be designated</strong></td>
<td>City _________ Country ________________</td>
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<tr>
<td></td>
<td>Any immigrant petitions ever filed by an employer, family member or anyone else?</td>
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<td></td>
<td>Any prior stays in the United States? (continue on additional sheet if necessary)</td>
</tr>
<tr>
<td></td>
<td>Date entered _______ Date departed _______ Status _______</td>
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<tr>
<td></td>
<td>Date entered _______ Date departed _______ Status _______</td>
</tr>
<tr>
<td></td>
<td>Date entered _______ Date departed _______ Status _______</td>
</tr>
<tr>
<td><strong>Marital status</strong></td>
<td>Single (never married) ____________________</td>
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<td>Married ________________________________</td>
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<td></td>
<td>Divorced ________________________________</td>
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<td>Widowed ________________________________</td>
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<tr>
<td><strong>Spouse</strong></td>
<td>Name: ________________________________</td>
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<td>Maiden name: ________________________________</td>
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<td></td>
<td>Date of birth: ________________________________</td>
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<td></td>
<td>Place of birth: ________________________________</td>
</tr>
<tr>
<td></td>
<td>Country of citizenship: ________________________________</td>
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<td></td>
<td>SS# _________________ A# _________________</td>
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<tr>
<td></td>
<td>Currently residing with beneficiary? _________</td>
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<td></td>
<td>If not, where? ________________________________</td>
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<td></td>
<td>________________________________</td>
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<tr>
<td><strong>Children</strong></td>
<td>Name: __________________________</td>
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<tr>
<td></td>
<td>Maiden name: __________________________</td>
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<td></td>
<td>Date of birth: __________________________</td>
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<td></td>
<td>Place of birth: __________________________</td>
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<td>Country of citizenship: __________________________</td>
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<td></td>
<td>SS# _______________ A# _______________</td>
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<tr>
<td></td>
<td>Current residing with beneficiary? _________</td>
</tr>
<tr>
<td></td>
<td>If not, where? __________________________</td>
</tr>
<tr>
<td>When did principal beneficiary’s membership in the denomination begin? Explain (e.g., at birth, at another age?)</td>
<td>Name of denomination:</td>
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<td></td>
<td>Name of diocese:</td>
</tr>
<tr>
<td></td>
<td>Name of parish:</td>
</tr>
</tbody>
</table>

Please provide copies of:

- All U.S. visas ever issued to alien and each family member
- I-94 cards ever issued to alien and each family member
- Approval notices ever issued to alien and each family member
- All stamps placed in passports ever issued to alien and each family member
- All prior petitions ever filed for alien and each family member
- Certificates/evidence showing membership in the denomination
- Evidence of alien’s qualifications for the position offered (Diplomas, certificates of ordination, certificates showing training)
- Evidence of prior qualifying experience as a religious worker
FORM M-737, OPTIONAL CHECKLIST FOR SPECIAL IMMIGRANT RELIGIOUS WORKERS FILING FORM I-360

Requirements for the Petitioner

☐ Form I-360, including the Employer Attestation

1. If the petitioner has its own individual IRC 501(c)(3) letter, provide a currently valid determination letter from the IRS establishing that the petitioning organization is a tax-exempt organization; or

2. If the petitioner is recognized as tax-exempt under a group tax exemption, provide a group ruling; or

3. If the petitioner is affiliated with the religious denomination, provide:
   a. Currently valid determination letter from IRS;
   b. Documentation that establishes the religious nature and purpose of the organization;
   c. Organizational literature; and
   d. Religious denomination certification.

☐ Verifiable evidence of how the petitioner intends to compensate the beneficiary, including salaried or non-salaried compensation. Example: Past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

Requirements for the Beneficiary

☐ Evidence of prior employment: Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work must have occurred after the age of 14, and if acquired in the United States, must have been authorized under U.S. immigration law.

1. If the beneficiary was employed in the United States during the two years immediately preceding the filing of the petition and:
   a. Received salaried compensation, provide IRS documentation that the beneficiary received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
   b. Received non-salaried compensation, provide IRS documentation of the non-salaried compensation, if available.
   c. Received no salary but provided for his or her own support, and provided support for any dependents, provide additional documents to show how support was maintained such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

2. If the beneficiary was employed outside the United States during such two years, provide comparable evidence of the religious work.

☐ If the beneficiary is a minister, provide:

1. A copy of the beneficiary's certificate of ordination or similar documents; and

2. Documents reflecting acceptance of the beneficiary's qualifications as a minister in the religious denomination, as well as evidence that the beneficiary has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by the religious denomination. Include transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination; or

3. If the denominations do not require a prescribed theological education, provide:
   a. Denomination's requirements for ordination to minister;
   b. Duties allowed to be performed by virtue of ordination;
   c. Denomination's levels of ordination, if any; and
   d. Beneficiary's completion of the denomination's requirements for ordination.

Form M-737 (Rev. 09/23/09)
Questions & Answers

Religious Worker National Stakeholder Engagement


Overview

On July 14, 2011 and July 28, 2011, the USCIS Service Center Operations Directorate in conjunction with the California Service Center hosted an engagement with the religious worker stakeholders. USCIS discussed issues related to the religious worker program including but not limited to RFEs, processing times, and on-site inspections. The information below provides a review of the questions discussed and the responses provided by USCIS.

Questions and Answers

Question 1: Despite the new regulations which codified that a foreign national may only be admitted in R-1 classification for the validity of the R-1 petition, up to a maximum of 30 months from the date of admission, U.S. Customs and Border Protection (CBP) sometimes admits R-1 nonimmigrants for 36 months, in accordance with the policy under the prior regulations. In such instances, what should the R-1 principal and their R-2 dependents do to correct the erroneously issued Form I-94?

Response: The validity date errors on the I-94 should be corrected by bringing it to the attention of the port of entry that issued the I-94 or with the Deferred Inspection Office of CBP. You may wish to visit CBP’s website at www.cbp.gov. 8 CFR 214.2(r)(4) only allows the initial period of admission in R-1 status up to 30 months from the date of the initial admission and that R-2 status is granted for the same period of time and subject to the same limits as the principal. 8 CFR 214.2(r)(5) further indicates that an R-1 alien who is maintaining status or is seeking readmission and who satisfies the eligibility requirements of this section may be granted an extension of R-1 stay or readmission in R-1 status for the validity period of the petition, up to 30 months, provided the total period of time spent in R-1 status does not exceed a maximum of five years. If the I-94 for R-1 status was issued beyond the initial maximum period of 30 months as stipulated in the regulations, it may have been issued in error by the CBP and should not be relied upon. Although neither the petitioner nor the beneficiary will be penalized for the error caused by the CBP officers, such error may affect the beneficiary’s future immigration benefits if the beneficiary’s stay exceeds the statutory maximum. Please note that Form I-102, Application for Replacement /Initial Nonimmigrant Arrival-Departure Document, should not be used to request USCIS to correct an error on Form I-94 issued by CBP, as USCIS cannot correct such errors.

Question 2: If an individual in an R-1 status travels outside of the U.S. during his or her authorized period of R-1 stay, can the period spent abroad be recaptured?
Response: No. There is no provision in the statute or the regulations for recapturing of time spent abroad in R status. However, as per 8 CFR 214.2(r)(6) the five-year limitation on the statutory maximum total period of stay does not apply to R-1 nonimmigrants who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. Furthermore, the limitations do not apply to R-1 nonimmigrants who reside abroad and regularly commute to the United States to engage in part-time employment.

Question 3: Is an employer required to file a new petition for change of employment location of a beneficiary in an R-1 status under the new rule? For example, the petitioner filed the R petition which was approved for work at the location A listed on the Form I-129. If the petitioner would like to reassign the R-1 beneficiary to another location B within the same denomination, does the petitioner need to file a new petition? If so, which box must be marked on the Form I-129?

Response: The petitioner may be required to file an amended petition and receive an approval prior to the beneficiary’s commencement of employment at the location different from that listed on the original approved R-1 petition if there is a material change in the terms or conditions of employment or the beneficiary’s eligibility as specified in the original approved petition. The Employer Attestation which is part of the R-1 Classification Supplement to Form I-129 contains items such as the number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees; and the specific location(s) of the proposed employment. Changes in location of employment may constitute material changes to the terms and conditions of employment as specified in the original approved petition. An amended petition can be filed, with fee, by checking the box “F” under item 2 in Part 2 of the Form I-129.

Question 4: The new rule indicates that the petitioner (employer) must be a tax-exempt organization under section 501(c)(3) of the IRC. Therefore, does the beneficiary’s work location have to be tax exempt under section 501(c)(3) of the Internal Revenue Code (IRC) or one having a group tax exemption?

Response: The petitioner should establish that the location where the beneficiary will work is covered by the group ruling issued to the petitioning central organization. This may be accomplished through the submission of a valid determination letter from the IRS issued to the petitioning central organization along with evidence such as an official directory listing the location of the beneficiary’s employment reflecting that the intended location is part of that group ruling. With regard to the statement that the new rule only requires the petitioning employer be tax-exempt under section 501(c)(3) of the IRC, it should be noted that a job offer is required for the R-1 classification. According to 8 CFR 214.2(r)(1)(iv), an R-1 nonimmigrant must be coming to or remaining in the United States at the request of the petitioner to work for the petitioner. Furthermore, 8 CFR 214.2(r)(13) states:

An R-1 alien may not be compensated for work for any religious organization other than the one for which a petition has been approved or the alien will be out of status. A different or additional employer seeking to employ the alien may obtain prior approval of such employment through the filing of a separate petition and appropriate supplement, supporting documents, and fee prescribed in 8 CFR 103.7(b)(1).

Therefore, it is important to establish the nexus between the petitioner and the beneficiary’s employment location to ensure that the location where the beneficiary will work is part of the petitioning organization. Tax-exempt status of the petitioning organization and the beneficiary’s employment location is one of the indications to establish such connection.
Question 5: When one petitioner submits multiple petitions for multiple beneficiaries, can all the petitions submitted by the same petitioner be adjudicated by the same adjudicators?

Response: CSC has sole jurisdiction over religious worker petitions and there is a dedicated team of adjudicators assigned specifically to adjudicate religious worker petitions.

Question 6: What is the current status of the Ruiz Diaz litigation?

Response: On May 5, 2011, the U.S. District Court for the Western District of Washington, granted USCIS’ motion for summary judgment dismissing the litigation. This decision is currently on appeal to the Ninth Circuit. As of November 8, 2010, USCIS no longer accepts forms I-485, I-765, or I-131 filed concurrently with or based on a pending I-360. To date, an I-485, I-765, or I-131 application filed where the underlying petition is an I-360 petition for a religious worker must be based on an approved Form I-360.

Question 7: The new religious worker regulations changed the definition of "religious denomination" slightly from the old regulations. Retained in the new definition, found at 8 CFR 204.5(m)(5) and 8 CFR 214.2(r)(3), is the requirement of some form of "ecclesiastical government" used to govern a religious group. The comments on this definition in the preamble to the new regulations interpret the phrase quite broadly. The preamble states, "... the definition of 'religious denomination' does not require a hierarchical governing structure.... USCIS is aware that some denominations officially shun such structures. The focus of the regulation is, instead, on the commonality of the faith and internal organization of the denomination." Moreover, the regulation states: "thus, an individual church that shares a common creed with other churches, but which does not share a common organizational structure or governing hierarchy with other churches, can satisfy the 'ecclesiastical government' requirement of the 'religious denomination' definition by submitting a description of its own internal governing or organizational structure."

The new regulations seem to introduce some flexibility into the denominational membership requirement by defining "denominational membership" as "membership during at least the two-year period immediately preceding the filing date of the petition, IN THE SAME TYPE of religious denominational as the United States religious organization where the alien will work." The "same type" language appears to be an attempt to introduce such flexibility, particularly given the comments in the preamble mentioned above.

Can you comment on how CSC views the “same denomination” requirement as applied to Christians who maintained membership in a non-denominational church outside the U.S. and who seek to enter the U.S. to work in a religious worker capacity at another non-denominational church which does not share a common ecclesiastical governing structure with the entity abroad?

Response: A religious denomination is defined in 8 C.F.R. §204.5(m)(5) and 214.2(r)(3) as "a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

(A) A recognized common creed or statement of faith shared among the denomination’s members;
(B) A common form of worship;
(C) A common formal code of doctrine and discipline;
(D) Common religious services and ceremonies;
(E) Common established places of religious worship or religious congregations; or
(F) Comparable indicia of a bona fide religious denomination"

Thus, although the definition of “religious denomination” does not require a hierarchical governing structure, the foreign and U.S. non-denominational churches must be governed by a common ecclesiastical government and meet one or more of the requirements reflected in
A through F above.

Question 8: USCIS supplemental guidance dated January 5, 2009 stated that the final religious rule, which changed the legal requirements for I-360 religious worker petitions effective November 2008, does not apply retroactively to I-360 petitions filed prior to November 2008. Accordingly, the beneficiary would not need 2 years of authorized religious work prior to filing an I-360 petition if the I-360 petition was filed before November 2008. Can you please confirm that USCIS continues to apply this guidance and does not retroactively apply the final religious worker rule?

Response: The Supplemental Questions and Answers dated January 5, 2009 does not state that the religious worker final rule, which became effective on November 26, 2008, does not apply retroactively to I-360 petitions filed prior to the effective date of the final rule. Rather, it indicates that the final rule is not retroactive in the context of questions that ask about R-1 visas issued under the previous regulations without a petition approval by USCIS as well as R-1 visas issued based on an I-129 R petition approved under the previous regulations, as long as the prior approval has not been revoked under the new regulations. The preamble to the final rule states that all cases pending on the rule’s effective date and all new filings will be adjudicated under the standards of the new rule. It further states that if documentation is required under the new rule that was not required before, the petition will not be denied. Instead, the petitioner will be allowed a reasonable period of time to provide the required evidence or information. Accordingly, if the I-360 petition was filed prior to but was pending on the final rule’s effective date, it would be adjudicated under the new regulations, which require that the requisite two years of continuous religious work be authorized if the employment was in the U.S.

Question 9: What is suggested for a religious organization that claims it never has had the requirement to obtain a 501(c)(3) letter because it can show it is a house of worship and a non-profit organization. Such organizations also do not file taxes, all because these are costly to small organizations. How can such an organization still sponsor a religious worker visa or permanent worker application?

Response: A religious organization must apply for and receive an IRC § 501(c)(3) determination letter to demonstrate non-profit status if it wishes to utilize the R-1 nonimmigrant or the special immigrant religious worker program. The requirement to submit the IRC § 501(c)(3) letter is clearly stated in 8 C.F.R. §§ 214.2(r) (9) and 204.5(m)(8). Failure to comply with this requirement will result in an unfavorable decision of the filed petition.

To further clarify, the following is excerpted from the Special Immigrant and Nonimmigrant Religious Workers; Special Immigrant Nonminister Religious Worker Program Act, 73 Fed. Reg 72276. at 72280 (Nov. 26, 2008):

USCIS recognizes that the IRS does not require all churches to apply for a tax-exempt status determination letter, but has nevertheless retained that requirement in this final rule. See Internal Revenue Service, Tax Guide for Churches and Religious Organizations: Benefits and Responsibilities under the Federal Tax Law (IRS pub. no. 1828, Rev. Sept. 2006). A requirement that petitioning churches submit a tax determination letter is a valuable fraud deterrent. An IRS determination letter represents verifiable documentation that the petitioner is a bona fide tax-exempt organization or part of a group exemption. Whether an organization qualifies for exemption from federal income taxation provides a simplified test of that organization’s non-profit status.

Question 10: Can more than 2 years of part time work of under 35 hours per week for the same religious organization qualify for filing an I-360 for purposes of showing the beneficiary worked at least 2 years prior to filing for at least 35 hours per week?

Response: No. The qualifying position must be a full-time position.
According to 8 CFR 204.5(m)(4), religious workers must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition ...

Therefore, we need to look to 8 CFR 204.5(m)(2) which states that religious workers must:

Be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in one of the following occupations as they are defined in paragraph (m)(5) of this section:
(i) Solely in the vocation of a minister of that religious denomination;
(ii) A religious vocation either in a professional or nonprofessional capacity; or
(iii) A religious occupation either in a professional or nonprofessional capacity

As 8 CFR 204.5(m)(2) specifically states that the position must have been full-time, and 8 CFR 204.5(m)(4) requires that the religious worker have worked continuously for two years in one of the positions described in (m)(2), the qualifying position must have been full-time (at least 35 hours).

Question 11: Please address the continuing problem that originates at the Phoenix Lockbox which rejects or “does not recognize” a properly filed G-28 Notice of Appearance on behalf of a religious organization petitioner using the I-360 form.

Response: USCIS is aware of the issues with Lockbox’s system not being able to match the petitioning organization listed on the Form I-360 with the accompanying G-28 and is working on the system fix which is scheduled to be completed by September of 2011. In the interim, Lockbox is conducting a manual workaround to ensure that a receipt notice will be sent to the accredited representative or attorney of record if a properly executed Form G-28 has been submitted with the I-360 petition. However, if a representative of record did not receive a receipt notice despite the fact that a properly executed Form G-28 has been submitted with the petition, he or she may contact the CSC I-360 Attorney Inquiry e-mailbox at CSC I-360 Attorney Inquiry@dhs.gov to request a duplicate receipt notice.

Question 12: Why are I-360 and I-485’s being transferred to NSC?

Response: I-360 petitions for the religious worker category should not be transferred to NSC or TSC as the CSC has sole jurisdiction over the religious worker petitions as these petitions are adjudicated at CSC. Once the I-360 petition is approved by CSC, applicants may file their I-485 applications based on the approved I-360 petitions with either NSC or TSC depending on the jurisdiction.

Question 13: Can an application be amended after it's submission but before its adjudication?

Response: A petitioner should follow the standard process of contacting the National Customer Service Center (NCSC) at 1-800-375-5283 with a request to submit documentation or amend a petition. Depending on the requested changes, the petitioner may need to file an amended/new petition.

Question 14: If an RFE seems overly burdensome, what can be done to alleviate that burden? For instance, a Roman Catholic Diocese which was visited earlier and which filed previously approved petitions was asked for lease agreements, rental agreements and/or mortgage payments for every parish
where the priest might be assigned (there are more than 100 parishes), copies of city or fire department occupancy permits, 3 months of utility bills and photographs of each church, inside and outside.

**Response**: Each petition is fact dependent and is adjudicated on its own merit. There may be circumstances in which it is necessary to request additional evidence to help establish the petitioner’s qualification. The decision to generate an RFE is made on a case-by-case basis. If the petitioners feel that the RFE was inappropriately issued, they may contact the USCIS National Customer Service Center (NCSC) at 1-800-375-5283, or in a case of premium processing filing, the CSC premium processing hotline at the number reflected on the RFE coversheet.

**Question 15**: Does a Supervisor review RFEs before issuance so as to appropriately limit the scope of the request?

**Response**: Not all RFEs are reviewed by supervisors prior to issuance. However, supervisors have roundtable discussions with the adjudicators on a regular basis about various issues pertaining to religious worker petitions and are making every effort to avoid unnecessary RFE issuance.

**Question 16**: What is USCIS doing to ensure that filed materials are not requested again in an RFE (e.g. tax-exempt status)?

**Response**: Every effort is being made to avoid generating an RFE for evidence already submitted. However, the submitted evidence must meet the standards for approval and must not, for instance, be outdated or illegible and must contain an appropriate certificate of foreign language translation. As mentioned above in response to question 15, supervisors have roundtable discussions with the adjudicators on a regular basis about various issues pertaining to religious worker petitions and are making every effort to avoid unnecessary RFE issuance.

**Question 17**: Where a sponsor of more than one worker is asked for the same supporting documentation, is there a way to show a prior approval, similar to the ability to avoid more than one site inspection once a successful inspection has been conducted. Perhaps we can reference prior approvals to show the legitimacy of the petitioner and avoid unnecessary duplication of documents.

**Response**: USCIS’ regulations and form instructions state that each petition must be filed with the required initial evidence as each petition is adjudicated on its own merit. Nevertheless, the petitioner may submit supplemental information (including approval notices for other cases from the same petitioner) if the petitioner believes that it helps bolster its case. However, the information submitted would only be supplemental; a petitioner must still submit the required initial evidence.

**Question 18**: Without preferring one religious group over another, does the fact that for instance a 60 year old Roman Catholic Diocese is widely known and is listed in The Official Catholic Directory, and that the Petition is signed by the Bishop, who also is listed in the Directory, have any evidentiary weight which might, in the exercise of discretion, limit the need for or at least, the scope of an RFE?

**Response**: Each petition is adjudicated on its own merit and must satisfy the burden of proof by a preponderance of the evidence. The lengthy history and ecclesiastical hierarchy of a religious entity may be relied upon by the adjudicating officer in the exercise of discretion. However, if certain evidence, as required by the regulations, is not submitted with the petition, an RFE may be issued.

**Question 19**: What suggestions do you have for supporting evidence which might make your work easier, speed up the process and mitigate against the likelihood of the issuance of an RFE?
Response: The requirements are clearly defined in 8 C.F.R. §§ 214.2(r)(9), (r)(10) and (r)(11), as well as 204.5(m)(8), (m)(9), (m)(10), (m)(11), and the Form I-129 and Form I-360 instructions. USCIS suggests that the petitioner provide sufficient evidence as described in the regulations listed above and the form instructions with the filing of the petition to minimize the likelihood of receiving an RFE and to increase adjudicative processing time. There are also optional checklists available to assist the petitioners in submitting the required supporting documentary evidence. Form M-736, Checklist for Religious Workers for Form I-129, and Form M-737, Optional Checklist for Special Immigrant Religious Workers Filing Form I-360, are available on the form’s entry page for Form I-129 and Form I-360, respectively, on the USCIS website. The petitioners may find these resources helpful in completing the nonimmigrant and special immigrant religious worker petitions.

Question 20: What is being done to speed up I-129 processing so the adjudication time is between 2 weeks and 2 months like the other I-129 petitions.

Response: USCIS has made many successful efforts in recent months to reduce the processing time and pending backlog for I-129 R petitions. However, the frequent need to request initial or additional evidence, as well as the need for on-site inspections prevents comparing the time needed to process I-129 R petitions with those of other employment-based nonimmigrant visa classifications.

Question 21: To avoid a repeat situation that caused the Ruiz-Diaz case to be filed, what is being done to speed up the adjudication of I-360 petitions based on special immigrant religious worker status. The current processing time posted says 5 months, but the actual time is minimally 7 months and longer.

Response: Efforts are continually being made to complete adjudications as timely as possible, although there are other factors such as site checks and RFES that affect the timeliness of a final decision.

Question 22: Why not allow Premium Processing for I-360s based on religious worker status for those who have already had a site inspection? Why has this not been considered, when it would follow the same rules as the I-129 which has been being executed successfully for religious workers?

Response: USCIS appreciates this suggestion and will take it into consideration.

Question 23: What is the best way to request an expedite when premium processing is not possible on an I-129.

Response: As indicated at the USCIS website, all expedite requests are reviewed on a case-by-case basis, and are granted at the discretion of the Director if certain criteria are met by the petitioner. The petitioner can make an expedite request by contacting the National Customer Service Center (NCSC) at 1-800-375-5283. The NCSC will take a “service request” and forward your expedite request to the office with jurisdiction over the application or petition. The petitioner also has the option of writing a letter to the service center. Please refer to www.uscis.gov for further information regarding request for expedited processing.

Question 24: There was a memo that permits Premium Processing for Churches or Organizations that have passed the site visits. How do we determine this fact, since no certificates or notice is given that state this fact?

Response: There is no memo, but USCIS posted on its website an announcement of resumption of premium processing service for the R-1 nonimmigrant religious worker visa classification along with questions and answers. As mentioned in the press materials, prior to accepting Form
I-907, Request for Premium Processing Service, USCIS will conduct a system search to verify whether or not a successful site inspection was completed at the location where the beneficiary will work. The petitioner may choose to submit a copy of the Form I-797 approval notice for the previously approved R petition to facilitate USCIS in locating the petitioner’s site inspection record.

**Question 25:** Is there a method for the headquarter temple in a district to request on-site inspection of its smaller branches in the area if the headquarter owns all the temples in the district?

**Response:** No, USCIS does not accept requests for on-site inspections. If and when USCIS conducts an on-site inspection of the petitioning organization, the inspections may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. See 8 CFR 204.5(m)(12) and 8 CFR 214.2(r)(16).

**Question 26:** Can a temple request an on-site inspection to be done in advance of a petition?

**Response:** No. On-site inspections cannot be requested in advance of or subsequent to a religious worker petition being submitted and received by USCIS. A petition, signed by the intending petitioner acknowledging his/her responsibilities, must be received in order for USCIS to conduct an on-site inspection.

**Question 27:** Why are certain organizations getting numerous on-site inspections when already having had one within the last 4 years?

**Response:** There is no set validity for site visits. Site inspections are conducted at the petitioner’s location. Therefore, if the petitioning entity has multiple locations, it is possible that petitions are being filed that reflect the addresses of each organizational location instead of a central headquarters organization or main office. It is also possible that the petitioner’s address has changed. Site inspections may also be requested at the discretion of an adjudicator if he or she identified an area of concern.

**Question 28:** Is the Service still doing site inspections? If so, what effect does a favorable report have on the filing of subsequent R-1 or Special Immigrant Petitions by the same religious organization and for how long?

**Response:** Pre-approval on-site inspections are still being conducted on any religious organization that has not already satisfactorily completed a site inspection. However, even after a petitioner satisfactorily completes a pre-approval site inspection, a post-adjudication site inspection may be conducted. USCIS may also elect to conduct a pre or post-adjudication site inspection in any case where derogatory information indicates fraud or in cases where the record indicates substantial changes in the petitioning organization.

**Question 29:** Might the Petitioner receive a copy of the report which could be included in subsequent filings?

**Response:** No, USCIS does not release the compliance review report. An approval notice is evidence of a petitioner’s satisfactory completion of an on-site inspection and can be submitted with subsequent filings.

**Question 30:** For how long are site visits valid?

**Response:** There is no set validity for site visits. Please see the response to question 27 above.
**Question 31:** What is the current time it takes to complete a site inspection for a religious organization that has not had one to date? What is being done to speed up the wait time?

**Response:** It is anticipated that religious worker site visits will be done within 90 days of referral to the Center Fraud Detection Operation from an adjudicator after an adjudicator reviews the religious worker petition. The petitioner may request expedited processing if they meet the criteria listed on the USCIS website. Please refer to [www.uscis.gov](http://www.uscis.gov) for further information.

Demonstrating the scope and effect of the site inspections, in FY 2010, USCIS performed 742 site inspections. Due to work carried over from FY 2009 (the first year of the Administrative Site Visit and Verification Program), FDNS reviewed 974 site visit reports. Of these 974, only 57 (6%) resulted in a “not verified” result (meaning that the information in the petition could not be immediately verified and that further review or action was warranted). Ultimately, 32 (3%) of the 974 petitions were denied or revoked. Looking at the scope of the fraud problem in 2005, when a Benefit Fraud Assessment revealed a 33% fraud rate in the religious worker program, these results are encouraging. It is important to note that not all of the 32 denials and revocations were necessarily based on fraud. Thus the actual fraud rate within the religious worker program is likely very much reduced from the 2005 rate.

While FDNS does not believe that performance of site inspections unreasonably delays processing of religious worker petitions, it is interested in knowing of any cases where processing times seem to be unusually long.
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Additional Resources

- New Form I-129, Petition for Nonimmigrant Worker, with R-1 Supplement (Edition 10/07/11; 01/19/11 and Rev. 11/23/10 also accepted)

- Form I-360, Petition for Amerasian, Widow(er), Special Immigrant (01/18/11, but 11/23/10, 11/08/10 and 12/30/09 editions also accepted)

- M-737 Optional Checklist for I-360 published by USCIS (Rev. 08/31/11)

- M-736 Optional Checklist for Nonimmigrant Religious Workers (Rev. 08/31/11)

- USCIS Policy Memo on the End of Religious Worker I-360/I-485 Concurrent Filings (Updated 1/7/11) [AILA Doc No. 10111662]


- Update of Adjudicator Field Memorandum 34.5 Nonimmigrant Aliens Employed in Religious Occupations (Rev. 09/02/2010)

- AFM Update on Special Immigrants 22.3 (Rev. 01/15/2009)

- USCIS Releases Supplemental Q & As on Religious Worker Final Rule [AILA Doc No. 09010663]

- USCIS Update Clarifies Notification Requirements for R-1 Religious Workers [AILA Doc No. 09081163]

- AILA Liaison/SCOPS Q & As (02/05/09) [AILA Doc No. 09022766]

- USCIS Resumes Premium Processing for Certain R-1 Petitions and Q&A [AILA Doc No. 09072067]

- Class Action Lawsuit Challenges Restrictions on Religious Workers [AILA Doc No. 12013060]

- AILA/SCOPS Liaison Q&As (6/22/11) [AILA Doc No. 11070667]

- 9 FAM 41.58 Aliens in Religious Occupations (09/27/2010)