



April 19, 2007

Fact Sheet

USCIS Proposes Revisions for Religious Worker Visa Classifications

U.S. Citizenship and Immigration Services is proposing to amend existing regulations pertaining to special immigrant and nonimmigrant religious worker visa classifications. The proposed rule focuses on how the agency can best ensure the integrity of the religious worker program by eliminating opportunities for fraud in the program while, at the same time, streamlining the process for legitimate petitioners.

BACKGROUND

The Government Accountability Office (GAO) reported in 1999 incidents of fraud in the religious worker program. The report found that fraud often involved false statements by petitioners about the length of time an applicant was a member of a religious organization, their qualifying work experience, and the position being filled. The report also noted problems with the applicants making false statements about their individual qualifications and plans while in the United States.

USCIS has since continued to assess the potential for fraud in the religious worker program. The agency's Office of Fraud Detection and National Security (FDNS) found a 33 per cent rate of fraud in the program; their assessment also indicated patterns of potential fraud and weaknesses that created vulnerabilities for fraud to occur. Together with GAO's earlier report, the FDNS assessment shows a justifiable and compelling need to address the issue. USCIS' proposal, if implemented, will decrease the opportunity for fraud in the religious worker program.

PROPOSED CHANGES TO THE REGULATIONS

- **Petitioning Requirements**
 - USCIS proposes to require the filing of a petition in every instance (the requirement already exists for special immigrants and for organizations seeking to extend the stay or adjust status for nonimmigrant religious workers already in the U.S.).
 - Currently, non-immigrants outside of the U.S. may request a religious worker visa at a consular post or at the port-of-entry without a review of the legitimacy of the petitioner and the job offer.
 - The employing U.S. organization must complete and submit the Petition for a Nonimmigrant Worker (Form I-129) or Petition for a Special Immigrant (Form I-360).
 - This proposed requirement will allow USCIS to verify the legitimacy of the petitioner and the job offer prior to the issuance of a visa or admission to the U.S.
 - Petitioning employers are required to submit an Attestation (included in the Forms I-129 and I-360) verifying the worker's qualifications, the nature of the job offered, and the legitimacy of the organization.

- On-site Inspections
 - Notifies petitioners that USCIS may conduct on-site inspections of the organization seeking to employ either a nonimmigrant or a special immigrant religious worker.
 - Inspections are intended to increase deterrence and detection of fraudulent petitions and to increase the ability of the agency to monitor religious workers and ensure their lawful status in the U.S. is maintained.

- Evidentiary Requirements for Petitioning Organizations
 - Proposal requires that petitioning organizations submit a currently valid determination letter from the Internal Revenue Service showing that it is exempt from taxation as it relates to religious organizations.
 - Petitioning organizations that are not classified as “religious organizations” by the Internal Revenue Service may establish that they are affiliated with the religious denomination by completing the *Religious Denomination Certification* in the revised Forms I-129 and I-360.

- Nonimmigrant Religious Worker Classification
 - USCIS is proposing to amend the standard initial period of stay for nonimmigrant religious workers from three years to one. The revision gives the agency the opportunity to review whether the terms of the R-1 visa have been met. (Requests for two potential extensions of two years each will be considered).
 - Every petition for an R-1 classification must be initiated by a prospective or existing employer through the filing of a Form I-129 with USCIS. The beneficiary (the religious worker) will no longer be able to obtain an R-1 visa at a U.S. Consulate abroad or at a port-of-entry without prior approval of the Form I-129 by USCIS.

- Special Immigrant Religious Workers
 - USCIS is expanding its interpretation of prior work experience to include work that is not in the exact same position as the job offered.
 - The proposal allows for a short break in the continuity of the required two-year prior experience when the beneficiary was engaged in further religious training or on a sabbatical.

- New Definitions and Proposed Changes to Existing Definitions
 - To streamline the regulations, the proposal focuses on the distinctions between workers in a *Religious Vocation* and workers in a *Religious Occupation*, whether in a professional capacity or not.
 - A definition of *Denominational Membership* is added to clarify how a petitioner can establish that the beneficiary is a member in the same religious denomination as the U.S. employer seeking to employ him or her.
 - Expands the definition of *Religious Occupation* to focus on duties that “primarily, directly, and substantially relates to the religious beliefs or creed of the denomination.” Such a change distinguishes between committed religious work and non-qualifying work that, while may be incident to religious duties, cannot by itself warrant classification in the religious worker category.
 - A clear distinction is made between *Bona Fide Nonprofit Religious Organizations* and *Bona Fide Organizations which are Affiliated with the Religious Denomination* to account for the two types of petitioners who may seek to employ religious workers.
 - *Ministers* are defined as individuals duly authorized by a religious denomination to conduct religious worship and other duties performed by clergy. The proposal adds that the minister must be “fully trained according to the denomination’s standards.”
 - The term *Religious Denomination* applies to a religious group or community of believers governed or administered under some form of ecclesiastical government.

- The proposal amends the definition of *Religious Vocation* as one referring to a formal lifetime commitment to a religious way of life.

PUBLIC COMMENT:

- To comment on the proposed rule, please submit written comments on or before June 25, 2007 by one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.

- **Mail:**

Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, D.C. 20529.

Please reference DHS Docket No. USCIS-2005-0030 in your correspondence. This address can be used for paper, disk, or CD-ROM submissions.

- **Hand Delivery/Courier:**

Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, D.C. 20529
Contact Phone: (202) 272-8377