



Office of Communications

**U.S. Citizenship  
and Immigration  
Services**

# Fact Sheet

November 21, 2008

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

*New Rule Implemented to Ensure Integrity of the Religious Worker Program*

The U.S. Department of Homeland Security (DHS) has made significant revisions to the special immigrant and nonimmigrant (R-1) religious worker visa classification regulations. The [final rule](#) will ensure the integrity of the religious worker program by establishing a requirement that employers submit a formal petition for temporary religious workers, and by providing for increased inspections, evaluations, verifications, and compliance reviews of religious organizations. The rule also fulfills the Congressional mandate to issue final regulations to eliminate or reduce fraud in the religious worker program.

### **Petitioning Requirements**

- U.S. Citizenship and Immigration Services (USCIS) will require in every instance the filing of a petition by an employer on behalf of a nonimmigrant religious worker (the petition requirement already exists for special immigrants and for organizations seeking to extend the stay for or change status to nonimmigrant religious workers already in the U.S.).
- 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) (except in cases where the special immigrant is self-petitioning). This requirement will allow USCIS to verify the eligibility of the petitioner, the alien beneficiary, and the job offer prior to the issuance of a visa or admission to the United States.
- Petitioning employers will be 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.

### **Onsite Inspections**

- The final rule provides additional notification to petitioners that USCIS may conduct onsite inspections of organizations seeking to employ religious workers.
- 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 compliance with the terms of their religious worker classification.
- If an onsite inspection yields derogatory information not known to the petitioner, USCIS will issue a Notice of Intent to Deny the petition. The petitioner may submit additional documentation to rebut the derogatory evidence.
- A denial of a petition may be appealed to the USCIS Administrative Appeals Office.

## **Evidentiary Requirements for Petitioning Organizations**

- All petitioning organizations must submit a currently valid determination letter from the Internal Revenue Service establishing their tax-exempt status. (Note: A valid determination letter includes those issued before the effective date of the Internal Revenue Code (IRC) of 1986 and also those which may be issued under future IRC revisions).
- Petitioning organizations that are not classified as “religious organizations” by the Internal Revenue Service must establish the religious nature and purpose of their organization. They must also certify that they are affiliated with a religious denomination that is tax exempt by completing the *Religious Denomination Certification* in the revised Forms I-129 and I-360.

## **Nonimmigrant Religious Worker Classification**

- Every petition for a nonimmigrant religious worker (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.
- USCIS is amending the standard initial period of stay for nonimmigrant religious workers from three years to up to 30 months. The period of stay granted is always based on the petitioner’s need for the alien’s services. The revision gives the agency the opportunity to review, at an earlier time, whether the terms of the R-1 visa have been met. (Requests for one potential extension of an additional 30 months will be considered.)

## **Special Immigrant Religious Worker Classification**

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

## **New Definitions and Proposed Changes to Existing Definitions**

- The rule provides enhanced definitions of the terms *Religious Vocation* and *Religious Occupation*.
- The final rule amends the definition of *Religious Vocation* to be a formal lifetime commitment to a religious way of life.
- The final rule amends the definition of *Religious Occupation* by removing the list of occupations listed as examples in the proposed rule. The amended definition requires that the occupation relate primarily to a traditional religious function that is recognized as a religious occupation within the denomination.
- The rule defines the term *Minister* to be a person duly authorized by a religious denomination to conduct religious worship and other duties performed by clergy; but requires no uniform types of training for all denominations. Petitioning organizations may submit evidence of the individual denomination’s requirements for ordination to minister, the duties allowed to be performed by virtue of ordination, and the denomination’s levels of ordination, if any.
- 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.

- The rule defines *Religious Denomination* as a religious group or community of believers governed or administered under some form of “ecclesiastical government.” USCIS acknowledges, however, that some denominations lack a central government. Accordingly, the religious entity may satisfy the ‘ecclesiastical government’ requirement by submitting a description of its own internal governing or organizational structure.

### **Compensation Requirements**

- In both the immigrant and nonimmigrant programs, compensation can include either salaried or non-salaried compensation.
- Verifiable evidence must demonstrate how the alien will be supported.
- The only exception to the compensation requirement is for certain nonimmigrant religious workers who are participating in an established program for temporary, uncompensated missionary work within the petitioning organization, which is part of a broader, international program of missionary work sponsored by the denomination. Such missionary workers would nevertheless have to submit evidence of financial resources sufficient to support them during their work.

### **Revocation Procedures and Appeal Rights**

- Appeal rights and revocation procedures are currently applicable to immigrant religious workers.
- The final rule adds a provision allowing an appeal of a denied nonimmigrant religious worker petition.
- The final rule also establishes procedures for revocation of the approval of nonimmigrant religious worker petitions. As with immigrant religious worker petitions, the revocation may be automatic or may require notice depending on the grounds for revocation. A petition that is revoked on notice may be appealed.

### **Extension of Nonminister Categories Affected by the Sunset**

- On October 10, 2008, President Bush signed the Special Immigrant Nonminister Religious Worker Program Act, Public Law 110-391.
- This legislation granted a six-month extension of the two special immigrant categories for nonministers that expired on October 1, 2008. These two categories now expire on March 6, 2009.
- Although this legislation was enacted on October 10, 2008, it does not become effective until the Secretary of Homeland Security publishes final regulations eliminating or reducing fraud, issues a certification to Congress, and publishes a notice in the Federal Register that such regulations have been issued and are in effect.
- Now that the regulations are published and effective, USCIS has resumed the acceptance and processing of nonminister special immigrant religious worker petitions.

### **Pending Nonminister Cases Affected by the Sunset**

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