

9 FAM 41.58

ALIENS IN RELIGIOUS OCCUPATIONS

(CT:VISA-1544; 09-27-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 41.58 RELATED STATUTORY PROVISIONS

(CT:VISA-1544; 09-27-2010)

See INA 101(a)(15)(R) (8 U.S.C. 1101(a)(15)(R)), and INA 101(a)(27)(C)(ii) (8 U.S.C. 1101(a)(27)(C)(ii)).

INA 101(a)(15)(R)

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens

- (R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—
 - (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
 - (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

INA 101(a)(27)(ii)

(An alien who) seeks to enter the United States –

- (I) Solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) Before September 30, 2012 in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) Before September 30, 2012 in order to work for the

organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

9 FAM 41.58 RELATED REGULATORY PROVISIONS

(CT:VISA-1544; 09-27-2010)

See 22 CFR 41.58.

Section 41.58 Aliens in religious occupations.

- (a) Requirements for "R" classification. An alien shall be classifiable under the provisions of INA 101(a)(15)(R) if:
- (1) The consular officer is satisfied that the alien qualifies under the provisions of that section; and
 - (2) With respect to the principal alien, the consular officer has received official evidence of the approval by USCIS of a petition to accord such classification or the extension by USCIS of the period of authorized stay in such classification; or
 - (3) The alien is the spouse or child of an alien so classified and is accompanying or following to join the principal alien.
- (b) Petition approval. The approval of a petition by USCIS does not establish that the alien is eligible to receive a nonimmigrant visa.
- (c) Validity of visa. The period of validity of a visa issued on the basis of paragraph (a) to this section must not precede or exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.
- (d) Aliens not entitled to classification under INA 101(a)(15)(R). The consular officer must suspend action on the alien's application and submit a report to the approving USCIS office if the consular officer knows or has reason to believe that an alien applying for a visa under INA 101(a)(15)(R) is not entitled to the classification as approved.
- (e) Minister of religion. A minister is an individual who is duly authorized by a recognized religious denomination to conduct religious worship and to

perform other duties usually performed by authorized members of the clergy of that religion. A minister does not include a lay preacher who is not authorized to perform such duties. In all cases, there must be a reasonable connection between the activities performed and the religious calling of a minister.

- (f) Professional capacity. Working in a professional capacity means engaging in an activity in a religious vocation or occupation which is defined by INA 101(a)(32) or for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required for entry into that field of endeavor.
- (g) Religious occupation. A religious occupation is the habitual employment or engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.
- (h) Religious vocation. A religious vocation is a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.
- (i) Alien not entitled to classification under INA 101(a)(15)(R). An alien who has spent 5 years in the United States under INA 101(a)(15)(R) is not entitled to classification and visa issuance under that section unless the alien has resided and been physically present outside the United States, except for brief visits to the United States for business or pleasure, for the immediate prior year.

[74 FR 51237, Oct. 6, 2009]