

9 FAM 41.58 NOTES

*(CT:VISA-1541; 09-27-2010)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.58 N1 INTRODUCTION

(CT:VISA-1378; 11-24-2009)

- a. Section 209 of the Immigration Act of 1990, Public Law 101-649, created for the first time a separate nonimmigrant visa (NIV) classification at INA 101(a)(15)(R) specifically for religious workers. Many nonimmigrant religious workers had previously sought admission to the United States as visitors for business, temporary workers, or exchange visitors. (For the continuing alternate use of B-1 classification for certain religious workers, see 9 FAM 41.31 N9.1).
- b. The Immigration Act of 1990 also amended INA 101(a)(27)(C), the special immigrant category for ministers of religion, from which the standards for the R classification are derived.
- c. On November 26, 2008, U.S. Citizenship and Immigration Services (USCIS) promulgated regulations requiring that sponsoring employers must file Form I-129, Petition for a Nonimmigrant Worker, for all aliens for whom R-1 nonimmigrant status is sought. As a result, no R-1 NIVs may be issued to an alien who is not the beneficiary of an approved Form I-129 petition.

9 FAM 41.58 N2 SIGNIFICANCE OF APPROVED PETITION

9 FAM 41.58 N2.1 Department of Homeland Security (DHS) Responsible for Adjudicating R Petitions

(CT:VISA-1378; 11-24-2009)

By establishing a preliminary petition process, the Department of Homeland Security (DHS) assumed responsibility for determining whether the alien meets the required qualifications for R status. The DHS regulations governing adjudication of R petitions are detailed, and you should normally

rely on DHS determinations of entitlement to status.

9 FAM 41.58 N2.2 Approved Petition is Prima Facie Evidence of Entitlement to R Classification

(CT:VISA-1378; 11-24-2009)

- a. An approved Form I-129, Petition for a Nonimmigrant Worker, is, in itself, to be considered by consular officers as prima facie evidence that the requirements for R classification that are examined in the petition process have been met. Consular officers do not have the authority to question the approval of R petitions without specific evidence, unavailable to DHS at the time of petition approval, that the beneficiary may not be entitled to status. A large majority of approved R petitions are valid and involve bona fide establishments, relationships, and individual qualifications that conform to the DHS regulations in effect at the time the R petition was filed.
- b. On the other hand, the approval of a petition by DHS does not relieve the alien of the burden of establishing visa eligibility, in the course of which questions may arise as to his or her eligibility to R classification. If information developed during the visa interview (e.g., evidence which was not available to DHS) gives you reason to believe that the beneficiary may not be entitled to status, you may request any additional evidence that bears a reasonable relationship to this issue. Disagreement with DHS interpretation of the law or the facts, however, is not sufficient reason to ask DHS to reconsider its approval of the petition.

9 FAM 41.53 N2.3 Referring Approved R Petition to Department of Homeland Security (DHS) for Reconsideration

(CT:VISA-1541; 09-27-2010)

You shall consider all approved R petitions in light of these Notes, process with dispatch those cases which appear legitimate, and identify those which require local investigation or referral to the approving U.S. Citizenship and Immigration Services (USCIS) office for reconsideration. Refer cases to USCIS for reconsideration sparingly, to avoid inconveniencing bona fide petitioners and beneficiaries and causing duplication of effort by USCIS. You must have specific evidence of a requirement for automatic revocation, misrepresentation in the petition process, lack of qualification on the part of the beneficiary, or of previously unknown facts, which might alter USCIS's finding before requesting review of a Form I-129, Petition for a Nonimmigrant Worker approval. When seeking reconsideration, you must, under cover of Form DS-3096, *IV Petition Revocation Request Cover Sheet* –

National Visa Center, forward the petition, all pertinent documentation, and a written memorandum of the evidence supporting the request for reconsideration to the Kentucky Consular Center (KCC), which will then forward the request to the approving USCIS office. The KCC will maintain a copy of the request and all supporting documentation, and will track all consular revocation requests. You are no longer required to maintain a copy of all documents, although scanning the revocation request and supporting documents into the case file is recommended.

9 FAM 41.58 N3 EVIDENCE FORMING BASIS FOR R VISA ISSUANCE (USE OF PETITION INFORMATION MANAGEMENT SERVICE (PIMS))

(CT:VISA-1378; 11-24-2009)

- a. Before issuing an R visa, posts must use the electronic Petition Information Management Service (PIMS) record created by the Kentucky Consular Center (KCC) to verify petition approval (see 9 FAM 41.58 N2.2 above). Posts are able to access the details of approved nonimmigrant visa (NIV) petitions through the Consular Consolidated Database (CCD), through the PIMS Report.
- b. When presented at post, an approved Form I-129, Petition for a Nonimmigrant Worker, and a Form I-797, Notice of Action/Approval, may be used as sufficient proof to schedule an appointment, but posts should not review these forms for purposes of R visa issuance. Only PIMS shall provide the evidence forming the basis for R visa issuance.
- c. A valid Form I-797 must include the date of the notice, the name of the petitioner, the name of the beneficiary, the petition/receipt number, the expiration date of the petition, and the name, address, and telephone number of the approving DHS office. The paper Form I-797 is an unsigned computer-generated form. Both confirmation of the information contained in the Form I-797 and initiation of adjudication process may both be accomplished through PIMS. In the event PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC's Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days. You may not authorize a petition-based NIV without verification of petition approval through PIMS.

9 FAM 41.58 N4 VALIDITY OF R VISAS

9 FAM 41.58 N4.1 Maximum Validity of R Status

(CT:VISA-1541; 09-27-2010)

Generally, five years is the maximum allowable period of stay that will be granted to a R visa holder by DHS. After five years the alien must reside and be physically present outside of the United States for one year in order to be eligible for a R-1 visa again. This limitation does not apply, however, for R-1 nonimmigrants who did not reside continually in the United States and whose employment in the United States was seasonable or intermittent or was for an aggregate of six months or less per year. In addition, this limitation shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment.

9 FAM 41.58 N4.2 Visa Validity Determined by Petition

(CT:VISA-1541; 09-27-2010)

- a. The validity of an R visa may not exceed the period of validity of a petition approved to accord R status or the period for which the alien's authorized stay in R status was extended (see 8 CFR 214.2(r)(4)(i) and 9 FAM 41.58 N14 below). If the period of reciprocity is less than the validity period of the approved petition or extension of stay, the period permitted by the reciprocity schedule shall prevail. If the alien's prior visa and petition have expired, the alien is not eligible to receive a new visa until the pending petition has been approved.
- b. Posts are authorized to accept R visa petitions and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status as noted on the Form I-797, Notice of Action. Post must inform applicants that they may enter the United States on or after the effective date of the R-1 approval notice and not before, *and may wish to annotate the visa to reflect this.*
- c. While there is no change of employers *or* gap in authorized status *allowed for an alien in R-1 status*, an alien may obtain an R-1 visa that is valid *for* the time remaining on the first petition (and/or any extensions) *extending through* the validity of the second petition, *so long as there is no gap in the period of time covered by the two petitions.*

9 FAM 41.58 N5 NO RESIDENCE ABROAD REQUIREMENT FOR R NONIMMIGRANTS

(CT:VISA-1378; 11-24-2009)

There is no requirement in the INA that applicants for R status establish that

they have a residence in a foreign country which they have no intention of abandoning. An R visa application should not be refused, nor should the petition be returned to USCIS, with a recommendation for reconsideration solely on the basis of a filed or approved request for permanent labor certification or a filed or approved immigrant visa (IV) preference petition.

9 FAM 41.58 N6 CLASSIFICATION CRITERIA

(CT:VISA-1541; 09-27-2010)

The criteria for classification of a nonimmigrant R religious worker are:

- (1) The alien is a member of a religious denomination having a bona fide nonprofit religious organization in the United States (see 9 FAM 41.58 N8 below);
- (2) The religious denomination and its affiliate, if applicable, are exempt from taxation (see 9 FAM 41.58 N9 below);
- (3) The alien has been a member of the organization for two years immediately preceding application for admission (see 9 FAM 41.58 N10 below);
- (4) The alien is coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (5) The alien is entering the United States solely as a minister or to perform a religious vocation or occupation (in either a professional or nonprofessional capacity) (see 9 FAM 41.58 N11 and N12 below);
- (6) The alien is coming to or remaining in the United States at the request of the petitioner to work for the petitioner;
- (7) The alien will not work in the United States in any capacity not approved in a DHS-approved petition;
- (8) *For R-2 visas*, the alien *must be* the spouse or child of an R-1 nonimmigrant who is accompanying or following-to-join the R-1 nonimmigrant (see 9 FAM 41.58 N16 below); and
- (9) If the alien has previously spent five years in this classification, he or she *must have* resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure (see 9 FAM 41.58 N19 below).

9 FAM 41.58 N7 RELIGIOUS ORGANIZATIONS AND AFFILIATED ORGANIZATIONS

(CT:VISA-1378; 11-24-2009)

- a. An R-1 nonimmigrant must be coming to work for a bona fide nonprofit, religious organization or organization affiliated with a religious denomination in the United States. Such an organization:
 - (1) Is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code; and
 - (2) Possesses a currently valid determination letter from the Internal Revenue Service (IRS) confirming tax exempt status.
- b. A bona fide organization which is affiliated with a religious denomination means an organization which is closely associated with the religious denomination and is exempt from taxation under 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code.

9 FAM 41.58 N8 CHARACTERISTICS OF RELIGIOUS DENOMINATION

(CT:VISA-1378; 11-24-2009)

A religious denomination is a religious group or community of believers that is governed or administered under a common type of ecclesiastical Government and will generally be found to have one or more of the following elements or comparable indications of its bona fides:

- (1) A recognized common creed or statement of faith shared among its members;
- (2) A common form of worship;
- (3) A common formal code of doctrine and discipline;
- (4) Common religious services and ceremonies;
- (5) Common established places of religious worship or religious congregations; or
- (6) Comparable indicia of a bona fide religious denomination.

9 FAM 41.58 N9 MEMBERSHIP

(CT:VISA-1541; 09-27-2010)

The alien must establish that for two years immediately preceding the time of application for admission, he or she has been a member of the same

religious denomination as the United States religious organization where the alien will work.

9 FAM 41.58 N10 MINISTERS OF RELIGION

(CT:VISA-1378; 11-24-2009)

Only individuals authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that denomination may be classified as ministers of religion. The term does not include lay preachers or other persons not authorized to perform such duties. In all cases, there must be a rational connection between the activities performed and the religious calling of a minister. Ministers of religion must work solely as ministers in the United States, but may engage in administrative duties incidental to the duties of a minister.

9 FAM 41.58 N11 RELIGIOUS WORKERS

(CT:VISA-1541; 09-27-2010)

In addition to ministers, aliens coming to the United States to perform a religious vocation or occupation, in either a professional or nonprofessional capacity, may qualify as R-1 nonimmigrants. *"Professional Capacity" is defined as having a B.A. degree or the foreign equivalent. See 8 CFR 214.2(r)(2).*

9 FAM 41.58 N11.1 Religious Vocations

(CT:VISA-1378; 11-24-2009)

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 persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters. An alien who has taken vows and has made a lifelong commitment to a religion is presumed to be engaging in activities relating to a traditional religious function regardless of the nature of the activity. Persons with religious vocations may engage in any type of activity within their religious vocations, denomination, or its affiliate (see 9 FAM 41.58 N12.2 below). For vocation-based R-1 applicants, the emphasis is therefore on what the applicant's status is within the religious organization, rather than on what the applicant will do in the United States.

9 FAM 41.58 N11.2 Religious Occupations

(CT:VISA-1378; 11-24-2009)

- a. Religious occupation means an occupation that meets all of the following requirements:
- (1) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;
 - (2) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;
 - (3) The duties do not include positions that 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
 - (4) 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 (see 9 FAM 41.58 N12.3 below).
- b. The activity of a lay-person who will be engaged in a religious occupation must relate to a traditional religious function. The very nature of such activity must, therefore, embody the tenets of the particular religion and have religious significance; i.e., the performance of the activity constitutes "practice" of that religion. Consequently, working within a religious facility does not, in itself, qualify a lay-person for R-1 classification. The alien must further establish that his or her prospective activity relates primarily, if not exclusively, to matters of the spirit as they apply to his or her religion. It is not necessary that the applicant be engaged in a religious occupation at the time of the visa application or have prior experience with religious work.

9 FAM 41.58 N11.3 Training

(CT:VISA-1378; 11-24-2009)

Training does not constitute work and therefore does not qualify as a religious occupation. If training is involved, consular officers should examine the case to determine whether the alien is coming to the United States for training or to perform in a religious occupation. However, an alien who has a religious vocation (as described in 9 FAM 41.58 N12.2 below) may qualify for R-1 status even if they are engaged in training.

9 FAM 41.58 N12 B VISAS FOR RELIGIOUS ACTIVITY

(CT:VISA-1378; 11-24-2009)

Certain religious work can be undertaken in B visa status. (See 9 FAM 41.31 N9.1). In addition, other religious activities (e.g., private worship, prayer, meditation, informal (avocational) religious study, and attendance at religious services or conferences) which do not constitute religious "work" and therefore would not be appropriate for R classification unless the alien has a religious vocation. The applicant, however, may qualify for B-1 or B-2 visa status. Other than in the narrow contexts described in 9 FAM 41.31 N9.1, religious workers cannot work on a B visa, and if the alien will be paid a salary from a U.S. source, B classification may not be used, and the alien must qualify for R-1 or some other work visa.

9 FAM 41.58 N13 SPOUSE AND CHILDREN

9 FAM 41.58 N13.1 Derivative Classification

(CT:VISA-1378; 11-24-2009)

The spouse and unmarried children under 21 years of age of a religious worker classified R-1 are entitled to derivative R-2 classification and to the same length and limitation of stay as the principal alien if they are accompanying or following-to-join him or her in the United States. R-2 nonimmigrants are not required to demonstrate a residence abroad which they have no intention of abandoning.

9 FAM 41.58 N13.2 Employment of R-2 Aliens in the United States are Prohibited

(CT:VISA-1378; 11-24-2009)

Aliens in R-2 status are not authorized to accept employment. The consular officer shall take this into account in evaluating whether family members have furnished adequate evidence of their support while in the United States. R-2 nonimmigrants are permitted to study during their stay in the United States.

9 FAM 41.58 N14 ANNOTATING R VISAS

(CT:VISA-1541; 09-27-2010)

Posts *should annotate* the name and location of the religious denomination

or affiliate for which the alien will be providing services, *as well as the petition number, on* the visa. Posts should follow *the standard operating procedures* for annotating visas.

9 FAM 41.58 N15 ADMISSION, EXTENSION OF STAY, AND READMISSION

(CT:VISA-1541; 09-27-2010)

R-1 aliens *will normally* be admitted for an initial period of *36* months. Any request for an extension of stay in R status must be made by submitting a Form I-129, Petition for a Nonimmigrant Worker, *to* the Department of Homeland Security (DHS). An R-1 alien may be granted an extension of R-1 stay or readmission in R-1 status for the validity period of the petition, provided the total period of time spent in the United States does not exceed a maximum of five years.

9 FAM 41.58 N16 READMISSION AFTER TOTAL ALLOWABLE PERIOD OF STAY HAS BEEN REACHED

(CT:VISA-1378; 11-24-2009)

An alien who has spent five years in the United States in R status may not be issued a visa or be readmitted to the United States as an R nonimmigrant unless he or she has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. Such visits do not end the period during which an alien is considered to have resided and been physically present abroad, but time spent in the United States during such visits does not count towards fulfilling the one-year abroad requirement.

9 FAM 41.58 N17 CHANGE OF EMPLOYERS

(CT:VISA-1541; 09-27-2010)

A different or additional organizational unit of the religious denomination or affiliate seeking to employ or engage the services of a religious worker must file *a new* Form I-129, Petition for a Nonimmigrant Worker, with the jurisdictional DHS Service Center, along with evidence that the alien will continue to qualify as a religious worker.