



Questions & Answers

Religious Worker National Stakeholder Engagement

July 14, 2011 & July 28, 2011

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 petitioners may request expedited processing if they meet the criteria listed on the USCIS website. Please refer to 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.