



# U.S. Citizenship and Immigration Services

California Service Center  
Religious Worker Stakeholder Engagement  
October 9, 2014



U.S. Citizenship  
and Immigration  
Services

# Statute and Regulations for Religious Worker Classifications

## Statute (Immigration & Nationality Act):

- R-1: § 101(a)(15)(R)
- I-360 (SD / SR): § 101(a)(27)(C)

## Regulations (Title 8, Code of Federal Regulations):

- R-1 Nonimmigrant: 8 C.F.R. § 214.2(r)
- I-360 Special Immigrant Religious Worker: 8 C.F.R. § 204.5(m)



# What are religious workers?

## Religious Workers

- employment-based classifications for those seeking employment in the United States in a capacity of:
  - a minister
  - a religious vocation, or
  - a religious occupation



# Religious Workers

- Nonimmigrant – Filed on Form I-129 – Petition for a Nonimmigrant Worker (temporary)
  - Nonimmigrant Religious Worker (R-1)
  - Form I-129 must be filed by U.S. employer
  - Premium Processing Service (15-day turn around) is available for an additional fee to organizations that have successfully completed a site inspection. (Form I-907)
- Immigrant – Filed on Form I-360 - Petition for Amerasian, Widow(er), or Special Immigrant (permanent)
  - Special Immigrant Religious workers may self-petition
  - May be filed for either:
    - Ministers (Immigrant classification ‘SD’)
    - Non-ministers (Immigrant classification ‘SR’)

California Service Center has sole jurisdiction in the adjudication of all religious worker petitions.



U.S. Citizenship  
and Immigration  
Services

# Petitioner Evidentiary Requirements

The petitioner/employer must submit evidence of tax exemption (established in 1 of 3 ways):

- A currently valid determination letter from the IRS showing that the petitioning organization is a tax-exempt religious organization under section 501(c)(3) of the tax code, or
- A currently valid determination letter from the IRS establishing that the group is tax-exempt if the petitioning religious organization is recognized under a group tax- exemption, or
- For a bona-fide tax-exempt organization that is affiliated with the religious denomination, a currently valid determination letter from the IRS showing that the petitioning organization is a tax-exempt organization, *and*,
  - if the organization was granted tax-exempt status under section 501(c)(3) as something other than a religious organization, a religious denomination certificate is required.



# Petitioner Evidentiary Requirements

The petitioner/employer must submit:

- A completed Employer Attestation
- A completed Religious Denomination Certification, if applicable.
- Verifiable evidence of how it plans to compensate the beneficiary, including salaried or non-salaried compensation, or how the beneficiary will be self supporting.
- If the beneficiary will receive salaried or non-salaried compensation, such evidence may include, but is not limited to:
  - past evidence of compensation for the same or similar position;
  - audited budgets showing monies for salaries, leases;
  - verifiable documentation that room and board will be provided;
  - or
  - other evidence acceptable to USCIS.



# Petitioner Evidentiary Requirements

The petitioner/employer must submit:

- IRS documentation such as Form W-2 or certified tax returns:
  - If available, they must be submitted,
  - If unavailable, the petitioner must submit an explanation why they are not available with comparable verifiable documentation.



# Beneficiary Evidentiary Requirements

Evidence must be submitted demonstrating:

- That the beneficiary had membership in the same type of religious denomination as the US religious organization where the beneficiary will work, for 2 years immediately preceding the filing.
- The beneficiary's qualification to perform the duties of the position.



# What is an R-1 Nonimmigrant?

A religious worker coming temporarily to be employed:

- At least 20 hours per week;
- The worker intends to depart U.S. when R-1 status ends;
- May file an immigrant petition without impacting R-1 status.
  
- 5-year statutory limit
  - Initial Stay: up to 30 months
  - Extension of Stay: up to 30 more months,
  - Maximum of 5 years



# R-1 Nonimmigrant continued...

- If the beneficiary is in the United States, provide verifiable documentation to establish that the beneficiary is maintaining their nonimmigrant status.
- As of March 8, 2012, R-1 nonimmigrants may recapture time spent outside the United States when seeking an R-1 extensions. (Burden of proof lies with the organization.)



# Self-Supporting R-1

If the beneficiary is self-supporting, the documentation must show that the position the beneficiary will hold is part of an established program for temporary, uncompensated missionary work, which is part of a broader international program of missionary work sponsored by the denomination.

The petition must include evidence that:

- the denomination maintains programs both in the U.S. and abroad;
- the beneficiary is accepted into the missionary program;
- the religious duties and responsibilities are associated with traditionally uncompensated missionary work; and
- the beneficiary is maintaining verifiable sources of support, i.e. bank records, budgets documenting sources of self-support, or other evidence acceptable to USCIS.



# Evidentiary Requirements for Extension of R-1 Status

For extensions of stay, the petitioner must show evidence of:

- continued tax-exempt non-profit status or its affiliation with the religious denomination
- the beneficiary's previous R-1 employment:
  - verifiable evidence of salaried and/or non-salaried compensation; or
  - evidence of self-support.



# R-1 Dependents

- Spouse and unmarried child(ren) under 21 are admitted as R-2.
- R-2 dependents may not work in U.S. but may attend school without changing status.
- The dependent's duration of stay is the same as the principal worker.



# What is a Special Immigrant Religious Worker?

A minister (SD) or non-minister (SR) religious worker is an individual who:

- Seeks to live permanently in U.S. as a minister or in a qualifying religious vocation/occupation.
- Must work in a full-time compensated position (35+ hours per week).
- The worker may self-petition.
- Has a position that provides salaried or non-salaried compensation – there is no provision for self-supporting workers.



# What is a Special Immigrant Religious Worker?

For Special Immigrant Religious Workers:

- Worker must have been employed continuously in religious work either abroad, or in lawful immigration status in the U.S., for at least 2 years before the petition is filed.
- Workers may apply for permanent residence once the I-360 petition is approved.



# Special Immigrant Religious Nonminister (SR)

- Subject to a numerical limit that is reset annually at the beginning of the fiscal year – 5,000 visas
- Currently subject to a sunset date of September 30, 2015



# Dependents of Ministers and Non-Ministers

## Dependents of ministers:

- Spouse and unmarried children under 21 are admitted as SD-7 and SD-8.

## Dependents of non-minister religious workers:

- Spouse and unmarried children under 21 are admitted as SR-7 and SR-8.



# Site Inspections

Conducted by a government inspector:

- If an on-site inspection is conducted, a satisfactory completion is required prior to approval of the petition.
- May require more than one visit.

During a site visit, the inspector:

- verifies the existence of the organization;
- verifies information submitted with the petition, such as confirming the beneficiary's work hours, salary, and job duties;
- speaks with organizational representatives, signatory; and
- may request and review supporting documentation; also
- may take photos.



# Bona-fide Religious Organization or Affiliates

- Applies to both R-1 and Special Immigrant Religious Workers
- Provide an IRS Determination Letter showing that the petitioning organization is tax-exempt under 501(c)(3), section 170(b)(1)(A)(i), or
- An IRS Determination Letter showing that the petitioner is part of the group tax-exemption by providing evidence from the parent organization establishing that the petitioner is covered under the parent's organization's group tax-exemption, or
- For petitioners claiming affiliation with a religious denomination, provide a IRS Determination Letter, documents that establishes the religious nature of the organization; organizational literature; and a religious denomination certificate.



# Expedited Requests

Reviewed and processed on a case by case basis and should meet the following criteria:

- Severe financial loss to company or individual
  - Extreme emergent situation
  - Humanitarian situation
  - Nonprofit status of requesting organization in furtherance of the cultural and social interests of the United States
  - Department of Defense or National Interest Situation (Note: Request must come from official United States Government entity and state that delay will be detrimental to our government.)
  - Service error
  - Compelling interest of the Service
- ❖ If the expedite criteria are met, the ability to expedite adjudication of the petition is contingent on having a valid site inspection on file.



# Common Filing Issues (Errors)

- Organizations claiming that they are not required to have an IRS determination letter.
- The IRS determination letter is not current.
- Petitioner fails to provide evidence supporting group tax-exemption.
- Petitioning organizations are signing their own Religious Denomination Certificate.
- Evidence of Denominational Membership.
- Evidence of Salaried or Non-Salaried compensation.



# Helpful Filing Tips for Religious Worker Petitions

- For consular processing, Form I-129 must be filed with a duplicate copy of the petition along with duplicate copies of all supporting evidence.
- Signatures on Forms I-129 and I-360 must be from authorized officials of the petitioner.
- Form I-129: A proper signature on page 6 and on the attestation page 31 (The beneficiary cannot sign the petition or the attestation).
- Form I-360: A proper signature on page 11 and the attestation page 8 (The beneficiary may self-petition and sign page 11. However, the beneficiary even as a self-petition cannot sign the attestation; this must be signed by the religious organization of intended employment).



# Reminders to Include:

- Evidence of employment for 20 hours per week (I-129) or 35 hours per week for an (I-360).
- Evidence that the beneficiary will be employed in a minister, a religious vocation, or religious occupation position.
- For I-360 only, evidence of prior employment.
- For I-129 only, evidence for extension of R-1 status or a change of status to an R-1.



# References

- For more information, visit [www.uscis.gov](http://www.uscis.gov) ; details about forms, fees and filing checklists are available under the “Forms” tab.
  - Form M-736, Optional Checklist for Form I-129 R-1 Filings
  - Form M-737, Optional Checklist for Special Immigrant Religious Workers Filing Form I-360
- March 8, 2012 Memo on The Procedures for Calculating the Maximum Period of Stay for R-1 Nonimmigrants



# Q & A



U.S. Citizenship  
and Immigration  
Services