

The ABC'S Of Immigration: R-1 Religious Worker Visas

by Gregory Siskind

Religious workers seeking to temporarily enter the US to pursue work in their field are likely to enter using the R nonimmigrant visa.

Who qualifies for an R visa?

To qualify for an R visa, the applicant must be

- o A minister,
- o A person working in a professional capacity in a religious occupation or vocation, or
- o A person who works for a religious organization or an affiliate in a religious occupation who has been a member of the religious group for at least the two years immediately preceding the application.

What is a "Religious Denomination"?

A religious denomination is defined as a religious group that have some form of ecclesiastical government, a common belief or statement of faith, some form of worship, a set of religious guidelines, religious services and ceremonies, established places for worship, religious congregations or comparable evidence of a bona fide religious organization.

What are examples of "Religious Occupations"?

A religious occupation is an activity relating to "traditional religious functions." Examples of religious occupations include liturgical workers, religious instructors, religious counselors, cantors, workers in religious hospitals or religious health care facilities, missionaries, religious translators or religious broadcasters. Maintenance workers, clerks and fundraisers who work for religious institutions are not eligible under this category.

What is a "Religious Vocation"?

A religious vocation is defined as "a calling to religious life". This calling must be shown through the demonstration of commitment to the religious denominations, such as taking vows. Examples of this include nuns, monks, religious brothers and sisters.

How do I apply for an R visa?

This is an unusual category. If an applicant is outside the US, he or she can apply for an R-1 visa without prior USCIS approval. The applicant can go to the appropriate consulate and present the required evidence and be issued the visa on the spot.

If a person is in the US and wishes to change from one nonimmigrant category to R-1 status, an application must be made with the USCIS. This is done by submitting Form I-129, the R Supplement and a number of supporting documents showing eligibility for the category. Also, extensions of stay in R-1 status are made on this form.

What evidence needs to accompany an R visa application?

Among the most important evidence that must be presented by the applicant is documentation of the sponsoring religious group's tax exempt status or eligibility to receive tax exempt status in the US.

Under the Immigration and Naturalization Act (INA) §§ 101(a)(15)(R) and 8 CFR §§ 214.2(r), religious entities applying on behalf of religious workers must be "exempt from taxation as organizations described in IRC §§ 501(c)(3) as it relates to religious organizations." The regulations require these organizations show they either are exempt under 501(c)(3) as a religious organization, such as a church, or have the documentation required by the Internal Revenue Service to be eligible for exemption as a religious organization under 501(c)(3). The regulations include these two separate options because according to IRS Tax Publication #1828, titled "Tax Guide for Churches and Religious Organizations", churches are considered automatically exempt from taxation and are therefore not required to obtain a formal 501(c)(3) determination letter. Note that this requirement has been the source of many problems recently regarding religious workers. The Department of Homeland Security believes that there is considerable fraud occurring in the religious worker category and has taken very restrictive views on which institutions are eligible to apply for such visas.

The sponsoring organization also needs to submit a letter on behalf of the R-1 visa holder. This letter should outline the applicant's two-year minimum membership, including where that membership occurred, in or out of the US. It should also include a statement that the foreign-based religious group and the US based religious group for which the applicant will work belong to the same denomination. It must state the name and location of the organization in the US for which the applicant will work. Finally, it should outline the applicant's qualifications and salary.

How long can I have R status?

The maximum stay in R-1 status is 5 years. A person can obtain R-1 status again after remaining outside the US for one year before making another application.

What visa status would the spouse and children of an R-1 nonimmigrant receive?

Spouses and children of R-1 nonimmigrants are classified as R-2. They are not permitted to work unless they have their own work visas.

Are there any differences between the special immigrant religious worker category for green card applicants and R-1 non-immigrant visas?

The most important difference between the two religious worker categories is that the R-1 visa is temporary and the special immigrant religious worker visa is permanent. An applicant for a green card as a special immigrant religious worker must have been working for the religious group for at least two years prior to making the application. This work may be done either in or out of the US. In most cases where the work is done in the US, the person has been in the US on an R-1 visa. Another difference between the two is the forms involved. A special immigrant religious worker applies using Form I-360 in place of the I-129 and R supplement.

The evidence that should accompany the special immigrant religious worker petition and the role of the beneficiary within the religious organization are the same as for the R-1 applicant.

RECENT DEVELOPMENTS

As noted above, the R-1 visa category has been the source of considerable tension recently. Immigration adjudicators have been interpreting immigration regulations to require that a religious organization must be classified as a church under IRC §§ 170(b)(1)(A)(i). This trend was first seen in Administrative Appeals Office (AAO) decisions in 2000, as reported by American Immigration Lawyers Association (AILA) members. Similar problems then began to show up at USCIS service centers. If a religious organization could not demonstrate that it was a church, the petition was denied.

In response to complaints regarding the 'church' classification issue, the White House held a meeting on December 9, 2003 with several religious organizations. White House representatives and the CIS General Counsel's office agreed that immigration regulations were being misinterpreted by adjudicators. On December 17, 2003, USCIS Associate Director William R. Yates issued a memorandum that made an attempt to rectify the situation. The memo states that a religious organization classified as a church under the IRC is only one method of demonstrating that the petitioner is a qualifying religious organization. The memo further states that organizations other than churches can be considered qualifying organizations if it can be demonstrated that their tax exemption is due to religious factors and that the organizations are organized for religious purposes and operate under the principles of a particular faith, rather than solely for education, charitable, scientific and other 501(c)(3) qualifying factors."

An additional development is an Administrative Appeals Office (AAO) decision dated April 20, 2004 that reversed a Nebraska Service Center (NSC) decision denying a special immigrant religious worker petition (I-360). While the decision affected a religious immigrant worker, the decision may positively affect decisions for religious nonimmigrant workers (R-1) workers. In its decision, the AAO pointed out that the NSC was incorrect in its decision to deny the petition because of a lack of evidence establishing that the organization was a bona fide religious organization as recognized by the IRS" as the petitioner had submitted a second IRS letter that explicitly stated that the petitioner was a religious organization. The AAO also drew attention to portions of the IRS Publication 1828 that were submitted by the petitioner on appeal that pointed out that the IRS does recognize religious organizations that are not churches that may be tax-exempt under 501(c)(3). The AAO stated, "Therefore, the petitioner has overcome the finding of the [NSC] director that the petitioner is not a bona fide nonprofit religious organization." The AAO concluded that the NSC's determination that only churches qualify as religious organizations is overly broad and is, therefore, withdrawn."

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