

**DEPARTMENT OF HOMELAND SECURITY****U.S. Citizenship and Immigration Services****8 CFR Parts 204, 214 and 299**

[CIS No. 2302-05; DHS Docket No. USCIS-2005-0030]

RIN 1615-AA16

**Special Immigrant and Nonimmigrant Religious Workers****AGENCY:** U.S. Citizenship and Immigration Services, DHS.**ACTION:** Final rule.

**SUMMARY:** This final rule amends U.S. Citizenship and Immigration Services (USCIS) regulations to improve the Department of Homeland Security's (DHS's) ability to detect and deter fraud and other abuses in the religious worker program. This rule addresses concerns about the integrity of the religious worker program by requiring religious organizations seeking the admission to the United States of nonimmigrant religious workers to file formal petitions with USCIS on behalf of such workers. This rule also implements the Special Immigrant Nonminister Religious Worker Program Act requiring DHS to issue this final rule to eliminate or reduce fraud in regard to the granting of special immigrant status to nonminister religious workers. The rule emphasizes that USCIS will conduct inspections, evaluations, verifications, and compliance reviews of religious organizations to ensure the legitimacy of the petitioner and statements made in the petitions. This rule adds and amends definitions and evidentiary requirements for both religious organizations and religious workers. Finally, this rule amends how USCIS regulations reference the sunset date by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence.

**DATES:** *Effective date:* This rule is effective November 26, 2008.**FOR FURTHER INFORMATION CONTACT:** Emisa Tamanaha, Adjudications Officer, Business and Trade Services, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272-1505.**SUPPLEMENTARY INFORMATION:****List of Acronyms and Abbreviations**BFA—Benefit Fraud Assessment  
DHS—Department of Homeland SecurityFDNS—Fraud Detection and National Security  
GAO—Government Accountability Office  
ICE—U.S. Immigration and Customs Enforcement  
INA—Immigration and Nationality Act  
IRC—Internal Revenue Code of 1986  
IRS—Internal Revenue Service  
RFRA—Religious Freedom Restoration Act of 1993  
USCIS—U.S. Citizenship and Immigration Services**I. Background**

The United States has a long history of allowing aliens into the United States for the purpose of performing religious work. Significant evidence indicates, however, that the current rules governing the immigration of religious workers do not adequately prevent individuals from seeking admission to the United States through fraud. USCIS is implementing requirements under this final rule to allow the Federal government, as well as religious organizations, to better detect and deter fraud or other abuses of the religious worker program without compromising the many contributions made by nonimmigrant and immigrant religious workers to religious organizations in the United States.

Aliens may apply for religious worker status in the United States as either nonimmigrants or special immigrants under sections 101(a)(15)(R) and (27)(C) of the Immigration and Naturalization Act (INA) and USCIS regulations. See 8 U.S.C. 1101(a)(15)(R) and (27)(C); 8 CFR 204.5(m), 214.2(r). A nonimmigrant religious worker (R-1) may only be admitted to the United States for a period not to exceed five years. The spouse and any unmarried children under the age of 21 of a nonimmigrant granted R-1 status can be admitted to the United States as R-2 nonimmigrants in order to accompany, or follow to join, the principal R-1 alien. R-2 nonimmigrants, however, may not accept employment while in the United States under R-2 nonimmigrant status. 8 CFR 214.2(r)(8).

Aliens classified as special immigrant religious workers are eligible for admission to the United States as permanent residents. The spouse and any unmarried children under the age of 21 of a special immigrant religious worker also are eligible to apply for permanent residence by virtue of the worker's acquisition of permanent residence. INA section 101(a)(27)(C), 8 U.S.C. 1101(27)(C). However, to immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant

or adjust their status to permanent residence while in the United States by no later than September 30, 2008. Section 101(a)(27)(C)(ii)(II) and (III) of the Act, 8 U.S.C. 1101(a)(27)(C)(ii)(II) and (III). The sunset date, the final date by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence only applies to special immigrant workers in a religious vocation or occupation; it does not apply to the nonimmigrant religious worker category or to special immigrant ministers.<sup>1</sup>

To qualify for religious worker status, the alien, whether a special immigrant or nonimmigrant, must have been a member of a religious denomination having a bona fide, non-profit religious organization in the United States. The applicant must have been a member of the religious denomination for at least two years preceding application for religious worker status. The alien also must plan to work as a minister of the denomination or in a religious occupation or vocation for a bona fide, non-profit religious organization (or a tax-exempt affiliate of such an organization). Examples of persons working in religious occupations or vocations that may be eligible for religious worker visas currently include, but are not limited to, workers in religious hospitals or healthcare facilities, religious counselors, cantors, or missionaries. This group does not include maintenance workers, clerical workers or persons solely involved in fundraising.

Under current USCIS regulations, special immigrants seeking religious-worker status must be sponsored by an employer who submits a petition on behalf of the alien. 8 CFR 214.2(r)(3). USCIS must approve the petition before the alien is granted special immigrant status.

USCIS does not currently require, however, that a nonimmigrant living outside of the United States file a petition to obtain a religious worker visa (R-1). At present, an alien can initiate an R-1 classification at a consular office overseas through application for an R-1 visa (without any prior approval of a petition by USCIS). In addition, aliens from Visa Waiver Program countries do

<sup>1</sup> This sunset date, for special immigrant nonminister religious workers was initially implemented in 1990, has been extended four times. This provision expired on October 1, 2008. The Special Immigrant Nonminister Religious Worker Program Act, S. 3606, Public Law No. 110-391 (October 10, 2008) extends the program to March 6, 2009 contingent, in part, upon promulgation of this rule to "eliminate or reduce fraud related to the granting of special immigrant status" to nonminister religious workers.

not have to obtain a visa to travel within the United States under § 217 of the INA. Those visa-exempt aliens are admitted (assuming eligibility and admissibility) into the United States when they present themselves at a port of entry.

In March 1999, the Government Accountability Office (GAO) identified incidents of fraud in the religious worker program. GAO, ISSUES CONCERNING THE RELIGIOUS WORKER VISA PROGRAM, Report GAO/NSIAD-99-67 (March 26, 1999). The report stated that the fraud often involved false statements by petitioners about the length of time that the applicants were members of the religious organizations, the petitioners' qualifying work experience and the positions being filled. The report also noted problems with applicants making false statements about their qualifications and exact plans in the United States. In 2005, USCIS's Office of Fraud Detection and National Security (FDNS) estimated that approximately one-third of applications and petitions filed for religious worker admission were fraudulent. FDNS found that a significant number of the fraudulent petitions identified had been filed on behalf of non-existent organizations. FDNS also found a significant number of petitions that contained material misrepresentations in the documentation submitted to establish eligibility.<sup>2</sup>

To address these concerns and minimize, if not eliminate, the potential for fraud and abuse in the religious worker program, USCIS issued a notice of proposed rulemaking on April 25, 2007 (NPRM or proposed rule), proposing amendments to the religious worker program. 72 FR 20442. Some of the changes proposed under the NPRM included:

- Requiring sponsoring employers to submit all petitions for religious worker status, rather than allowing the aliens to submit these petitions. Under the proposed petitioning process, USCIS would have the opportunity to verify the sponsoring employer and terms of employment before approving the petition.
- Providing notice of USCIS's intent to conduct on-site inspections as part of the petition approval process. This would allow USCIS to verify the legitimacy of the sponsoring employer and the terms of employment.

- Requiring that a religious worker (unless the alien has taken a vow of poverty or similar commitment) be compensated by the employer in the form of a salary or stipend, room and board or other support that can be reflected in verifiable Internal Revenue Service (IRS) documents.

- Adding or amending regulatory definitions to describe more clearly the regulatory requirements.

- Establishing additional evidentiary requirements for the petitioning employers and prospective religious workers.

- Adjusting the date by which special immigrant religious workers, other than ministers, must immigrate or adjust status to permanent residence. Congress extended this date to October 1, 2008, and the NPRM proposed to recognize this new date by referring to the relevant statutory provision.

USCIS received 167 comments during the public comment period for this rulemaking action. USCIS considered the comments received in the development of this final rule.

## II. Summary of the Final Rule

The final rule adopts many of the requirements set forth in the proposed rule. The rationale for the proposed rule and the reasoning provided in the preamble to the proposed rule remain valid and USCIS adopts the reasoning in the preamble of the proposed rule in support of the promulgation of this final rule.

USCIS made several changes based on the comments received. The significant provisions of the final rule and changes from the NPRM are summarized below and discussed in Section III "Responses to Public Comments on the Proposed Rule."

In addition, for ease of reference, USCIS duplicated definitions used both the immigrant worker and nonimmigrant worker provisions used the same words or phrases. Therefore, definitions such as "bona fide non-profit religious organization in the United States," "religious denomination," and "minister" are identical in both 8 CFR 204.5(m)(5) and 8 CFR 214.2(r)(3).

### A. Petitioning and Attestation Requirements

The NPRM proposed to require that all aliens seeking religious worker status—whether as special immigrants or nonimmigrants—must have a sponsoring employer or organization submit a petition on the aliens' behalf. This final rule retains the petitioning requirement, but continues to allow an alien seeking special immigrant

religious worker status to submit a petition (Form I-360) on his or her behalf. New 8 CFR 204.5(m)(6). A nonimmigrant alien seeking R-1 status cannot self-petition, but must have an employer submit a petition (Form I-129) on his or her behalf. 8 CFR 214.2(r)(7). By implementing the petition requirement, USCIS seeks to preserve the integrity of the program at the outset by denying the petition for fraud or other ineligibility factors. It also allows both USCIS and the petitioning religious employer to respond to derogatory information revealed by on-site inspections before the petition is denied.

In addition to filing the required form and associated petitioning fee, under this final rule, an authorized official of the petitioning employer must attest to a number of factors; including, but not limited to: (i) That the prospective employer is a bona fide non-profit religious organization or a religious organization which is affiliated with the religious denomination and is exempt from taxation; (ii) the number of members of the prospective employer's organization, the number of aliens holding religious worker status (both special immigrant and nonimmigrant) and the number of petitions filed by the employer for such status within the preceding five years; (iii) the complete package of salaried or non-salaried compensation being offered and a detailed description of the alien's proposed daily duties; and (iv) that an alien seeking special immigrant religious worker status will be employed at least 35 hours per week and an alien seeking nonimmigrant religious worker status will be employed for at least 20 hours per week. See e.g., new 8 CFR 204.5(m)(7); 214.2(r)(8).

### B. Denial, Revocation and Appeals Processes

This final rule adds a provision for a petitioner to appeal the denial of a nonimmigrant petition. New 8 CFR 214.2(r)(17). This final rule also adds a process for USCIS to revoke a nonimmigrant religious worker petition at any time, and a process for the petitioner to appeal a determination by USCIS to revoke the petition. New 8 CFR 214.2(r)(18) and (19). These appeal and revocation procedures have been added to the final rule, although they were not published for public comment in the proposed rule, to ensure consistency among the employment-based nonimmigrant visas. The nonimmigrant visa classifications at 8 CFR 214.2(h), (l), (o), (p), and (q) provide appeal and revocation

<sup>2</sup> A summary of the USCIS FDNS Religious Worker Benefit Fraud Assessment was posted on the docket for this rulemaking action and can be found at <http://www.regulations.gov> or <http://www.cis.gov>.

procedures similar to those added by this rule. Using the same standards for all employment-based nonimmigrant visas will ensure a fair and uniform process. Furthermore, adding revocation procedures to the final rule will enable USCIS to take immediate action against nonimmigrants who submit fraudulent petitions or engage in fraudulent activities while in the United States. Implementation of these revocation procedures will safeguard the interests of petitioners as there is an appeal process for petitions revoked on notice and an appeal process for petitions that are denied.

#### C. IRS Determination Letter

USCIS also is retaining the requirement proposed in the NPRM that a petitioner must file a determination letter from the Internal Revenue Service (IRS) of the tax-exempt status of the petitioning religious organization under Internal Revenue Code (IRC) 501(c)(3), 26 U.S.C. 501(c)(3). USCIS acknowledges that obtaining a determination letter from the IRS will require the organization to pay a user fee to IRS. If, however, the organization has already obtained a determination letter, those letters do not expire and the organization does not need to obtain a separate letter for purposes of this rule. An organization, therefore, will only need to pay a fee once to obtain the required determination letter.

#### D. USCIS On-Site Inspections

USCIS is retaining in this final rule the provision that USCIS may verify supporting evidence provided by a petitioner through any appropriate means, including an on-site inspection of the petitioning organization. 8 CFR 204.5(m)(1); 214.2(r)(12). Such inspections may include a tour of the organization's facilities, an interview with organization officials, review of selected organization records relating to the organization's compliance with immigration laws and regulations, and interviews with any other individuals or review of any other records that USCIS considers pertinent to the integrity of the organization.

#### E. Period of Initial Admission and Extension of Status for R-1 Workers

Under the INA, nonimmigrant religious workers may be admitted to the United States for a period not to exceed five years. INA section 101(a)(15)(R), 8 U.S.C. 1101(a)(15)(R). USCIS's current regulations provide for an initial period of admission of three years for nonimmigrant religious workers, with the opportunity to petition for an extension of stay for two

additional years. In the NPRM, USCIS proposed to change this to a one-year initial period of admission and the opportunity to petition for two extensions of two years each. USCIS has changed this provision. Under this final rule, nonimmigrant religious workers may obtain an initial period of admission of up to 30 months and then may obtain one extension of religious worker status for up to 30 months, for a total of no more than 60 months (the five-year statutory maximum) lawful status in the United States as nonimmigrant religious workers. See 8 CFR 214.2(r)(4) as amended. As with the initial petition for nonimmigrant religious worker status, however, the employer must submit the petition for an extension of stay (Form I-129).

#### F. Compensation Requirements

USCIS also clarified in this final rule the compensation requirements for nonimmigrant and special immigrant petitions. With limited exceptions, the beneficiary of an initial petition for R-1 nonimmigrant status must be compensated either by salaried or non-salaried compensation, and the petitioner must provide verifiable evidence of such compensation. If there is to be no compensation, the petitioner must provide verifiable evidence that such non-compensated religious workers will be participating in an established, traditionally non-compensated, missionary program within the denomination, which is part of a broader international program of missionary work sponsored by the denomination. The petitioner must also provide verifiable evidence of how the aliens will be supported while participating in that program. Petitioners must submit verifiable evidence of past compensation or support for nonimmigrants with any extension of status request for such nonimmigrants. Special immigrant petitioners must submit verifiable evidence of: (1) How the petitioner intends to compensate the alien and (2) past compensation or support to demonstrate the required previous two years of religious work. See e.g., 8 CFR 204.5(m)(7)(xi), (xii) and (10), 214.2(r)(11).

#### G. Self-Supporting Nonimmigrant Aliens

The final rule places limits on the ability of uncompensated, self-supporting nonimmigrant aliens to obtain status as nonimmigrant religious workers. USCIS regulations currently do not expressly prohibit the admission of uncompensated employees as R-1 religious workers. In the NPRM, USCIS

proposed to require that a nonimmigrant alien obtain a form of demonstrable compensation—either in salary or such in-kind support as room and board—and proposed to prohibit R-1 status for aliens who were not compensated by the organization or were self-supporting. 72 FR at 20453. This final rule departs from the NPRM by continuing to allow the admission of some uncompensated nonimmigrant alien workers under the R-1 visa classification, but restricts such admission to those workers who are 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. Given the great potential for fraud and abuse of the R-1 program that arises from allowing the petitioning entity to be exempted from the general requirement that it compensate its R-1 workers, it is reasonable to restrict sponsorship of self-supporting R-1 workers to the narrowest possible class of religious entities that might traditionally rely on such workers. Based on the comments received from the public, USCIS has determined that class to be the class of religious entities directing international missionary programs.

This final rule defines an established program for temporary, uncompensated missionary work to be a missionary program in which: (1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status; (2) missionary workers are traditionally uncompensated; (3) the organization provides formal training for missionaries; and (4) participation in such missionary work is an established element of religious development in that denomination. See new 8 CFR 214.2(r)(11)(ii). The purpose of the rule is to detect and deter fraud and other abuses in this program. Allowing new missionary entities, who have never undergone a site visit and the other protections the R-1 program affords DHS, to petition for self-supporting R-1 workers poses an unacceptable risk. Significantly, as discussed below, self-supporting missionary workers who are not beneficiaries of a petition filed by an entity with an established missionary program, and thus are not eligible for admission to the United States as R-1 nonimmigrant religious workers, may still pursue admission in the B-1 classification. 8 CFR 214.2(b)(1). See also 9 FAM 41.31 N9.1.

In such cases, the petitioner must submit evidence, such as books, articles, brochures or similar documents, demonstrating that the organization has an established program for

uncompensated missionary work and that the denomination maintains missionary programs both in the United States and abroad. Furthermore, the books, articles, brochures or other documents must describe the religious duties associated with the traditionally uncompensated missionary work. The evidence must include specific documentation of the alien's acceptance into the program and set forth any responsibilities the alien will assume while participating in the program. The evidence should also include copies of the alien's foreign and/or U.S. bank records with English translations, as appropriate, for the two-year period preceding the filing of the petition, alien's bank records, budgets documenting the sources of self-support (e.g. personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS. All evidence submitted to USCIS is handled in accordance with the Privacy Act and FOIA. To deter fraud, USCIS may refer determinations of whether such a program is self-supporting or taxable income to the Internal Revenue Service.

#### H. Definition of "Religious Occupation"

The final rule also removes the examples of employment positions from the proposed definition of "religious occupation." The listed employment positions were only examples, but commenters appeared to believe that the examples represented an exhaustive or biased list of employment positions that were eligible for religious worker status and that the list was tailored only to Judeo-Christian organizations. USCIS has removed those examples to eliminate confusion.<sup>3</sup> The final rule, however, clarifies that religious organizations must submit evidence identifying religious occupations that are specific to that denomination. Additionally, the petitioning organization must submit evidence demonstrating that an alien's proposed duties meet the religious occupation's requirements.

USCIS also has made changes in the final rule to improve its clarity and readability. For example, all definitions are included in both 8 CFR 204.5(m) and 214.2(r).

<sup>3</sup> The examples provided for "religious vocation" however remain in 8 CFR 204.5(m)(5) and 214.2(r)(3).

### III. Public Comments on the Proposed Rule

USCIS provided a 60-day comment period for the proposed rule that ended on June 25, 2007. USCIS subsequently re-opened the comment period for an additional 15 days, from November 1, 2007, to November 16, 2007. See 72 FR 61821 (Nov. 1, 2007). In drafting the final rule, USCIS considered all comments received during the entire comment period.

USCIS received 167 comments during the comment period. USCIS received comments from a broad spectrum of individuals and organizations, including religion-based refugee and immigrant services and advocacy organizations, religious groups of varying denominations, public policy and advocacy groups with religious affiliations, and individuals. Many commenters addressed multiple issues. Many comments provided variations on the same substantive issues or were identical in content to others.

USCIS considered the comments received during the comment period and all other materials contained in the docket in preparing this final rule. All comments may be reviewed at the Federal Docket Management System (FDMS) at <http://www.regulations.gov>, docket number USCIS-2005-0030.

#### A. General Comments

Commenters strongly supported the increased efforts to combat fraud in the religious worker categories. Many commenters, however, disagreed with the proposed methods to combat such fraud. Some comments criticized the USCIS Benefit Fraud Assessment's (BFA) methodology and findings of fraud in the religious worker category. Many commenters supported on-site inspections as a way of eliminating fraud; however, commenters were concerned that on-site inspections might be too intrusive or might be required for each petition.

A substantial number of commenters addressed the definitions in the proposed regulation, including the definitions of "religious occupation," "religious vocation," "minister," and "religious denomination." Some of these commenters suggested that a number of definitions were too narrow, because, in the opinion of the commenters, they only contemplated workers who are members of Judeo-Christian denominations. Many commenters argued that the initial evidence, attestation, compensation, and tax documentation requirements were too stringent. Commenters objected to the new requirement that

petitions be filed on behalf of all nonimmigrant as well as special immigrant religious workers. The commenters frequently disagreed with the proposal to change the lengths of the initial period of stay and renewal periods for nonimmigrant religious worker visas. Several commenters suggested that elements of the proposed rule violated constitutional principles. The specific substantive comments organized by subject area are summarized below.

#### B. Definitions

The applicable definitions for applicants and petitioners for religious worker classification are set forth in 8 CFR 204.5(m)(5) and 214.2(r)(3). The final rule adds several definitions, and expands or clarifies others. The amendments and additions discussed below, unless otherwise noted, apply to both nonimmigrants and immigrants. In the proposed rule, the definitions were found in the immigrant section, with only a cross reference in the nonimmigrant section. However for ease of reference, the entire set of definitions is now included in both 8 CFR 204.5(m)(5) and 8 CFR 214.2(r)(3).

##### 1. Bona Fide Non-Profit Religious Organization

Several commenters objected to the proposed requirement that petitioners must file a determination letter from the IRS of tax-exempt status under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), with every petition. Commenters pointed out that the IRS does not require churches to request a determination letter to qualify for tax-exempt status. A designation that an organization is a "church" is sufficient to qualify for tax-exempt status. Although some churches choose to request a formal IRC section 501(c)(3) determination, they are not required to do so. In addition, several comments stated that many churches cannot afford to pay the fees associated with requesting an IRC section 501(c)(3) determination letter.

Many commenters requested clarification of the proposed rule's requirement that a petitioner submit a currently valid IRS determination letter, pointing out that an exemption letter does not expire. One denomination asked that the final regulation specifically state that organizations classified as tax-exempt under IRC section 501(d), 26 U.S.C. 501(d), may qualify as bona fide organizations.

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.

Requiring submission of a determination letter will also benefit petitioning religious organizations. A determination letter provides a petitioning organization with the opportunity to submit exceptionally clear evidence that it is a bona fide organization.

USCIS recognizes that some religious groups and churches may be classified as tax-exempt under IRC section 501(d), 26 U.S.C. 501(d). Unlike an IRC section 501(c)(3), 26 U.S.C. 501(c)(3), tax determination letter, however, an IRC section 501(d) tax-exempt determination does not establish the non-profit status of a religious organization or church. The INA requires that the petitioning religious organization be a bona fide non-profit organization. INA sections 101(a)(15)(R) and (27)(C)(ii)(III), 8 U.S.C. 1101(a)(15)(R) and (27)(C)(ii)(III). USCIS further understands that some churches could "engage in business for the common benefit of the members," and their members obtain pro rata shares of these funds, which may render the church ineligible for IRC section 501(c)(3) tax-exempt status. As discussed elsewhere, the R-1 status is not exclusive and religious workers may be admitted under other provisions of the INA. However, given the high incidence of fraud found in the religious worker program, which was found to be tied to the validity of the organization itself, an organization must apply for and receive an IRC section 501(c)(3) determination letter to demonstrate non-profit status if that organization wishes to utilize either the R-1 nonimmigrant or the special immigrant religious worker program. If an IRC section 501(d) exempt organization cannot qualify for IRC section 501(c)(3) status, and is thus unable to petition on behalf of nonimmigrant religious workers under the R-1 classification, other nonimmigrant visa categories may be appropriate for that organization's purposes, such as the nonimmigrant B-1 category.

USCIS acknowledges that obtaining a determination letter from the IRS will require the payment of a user fee to the IRS, as discussed in the proposed rule, if the organization does not possess its original determination letter. 72 FR at 20449. USCIS has, however, confirmed with the IRS that determination letters do not expire. Therefore, an organization will need to pay a fee only once to obtain a determination letter. Although USCIS will accept determination letters of any date, USCIS may request evidence or confirm that the exemption is still valid. For example, if the address on the letter differs from the address given in the petition, an explanation should be provided. USCIS has retained the reference to "currently valid" determination letters in the rule text to emphasize that a letter revoked by the IRS cannot be used to meet the definition of tax-exempt organization under the INA. USCIS will routinely examine the publicly available tax documentation for the petitioning organization to determine the ability of the organization to provide support, will consult with the IRS on whether any petitioning organization is validly exempt from taxation under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), and may refer to IRS Publication 78, *Cumulative List of Organizations*, to verify whether the determination letter is current.

USCIS will routinely consult with the IRS on whether any petitioning organization is validly exempt from taxation under IRC section 501(c)(3), 26 U.S.C. 501(c)(3), and may refer to IRS Publication 78, *Cumulative List of Organizations*, to verify whether the determination letter is current. Although existing regulations permit applicants to submit material to USCIS regarding an applicant's non-profit status, the Department of Homeland Security (DHS) has determined that anti-fraud efforts, economy, and efficiency warrant the use of the formal IRS determinations, rather than an independent determination by USCIS. The IRS routinely makes decisions concerning the non-profit nature of organizations seeking tax-exempt status. Furthermore, INA sections 101(a)(15)(R) and (27)(C)(ii)(III), 8 U.S.C. 1101(a)(15)(R) and (27)(C)(ii)(III) use specific terminology that indicates the IRS is an appropriate agency to make determinations as to whether an organization is qualified to apply for religious worker visa benefits.

## 2. Ministers

The proposed regulation defined a "minister" as "an individual duly 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." Several commenters asserted that the proposed definition of "minister" was too narrow. The proposed rule also required specific evidence of ordination and training the minister had received. Several commenters interpreted the new definition as requiring ministers to have completed their training at a seminary or similar institution. Additionally, those commenters stated that not all religions require a formal theological education at an accredited theological institution. Other comments suggested that the concept of "fully trained" when referring to a minister's training is too vague in the context of a religion that has many levels of training for its ministers.

USCIS did not intend the definition of "minister" to require a uniform type of training that all denominations would have to provide their ministers. In the preamble to the proposed rule, USCIS acknowledged that some denominations do not require a particular level of formal academic training or experience. See 72 FR at 20445. Additionally, the proposed rule recognized that training varies among denominations and, for that reason, the question of whether a minister has met the denomination's training standards is resolved by reference to that denomination's own standards. The rule permits a petitioning organization to submit evidence of the individual denomination's requirements for ordination to minister, the duties allowed to be performed by virtue of ordination, and the denomination's levels of ordination, if any. The definition of "minister" set forth in the proposed rule is retained in the final rule.

## 3. Religious Denomination

Many commenters criticized the proposed definition of "religious denomination" because it required a denomination to have an "ecclesiastical government." Commenters interpreted this definition as potentially excluding denominations whose member religious organizations share a common creed but lack a common organizational structure or governing hierarchy. The commenters feared that, as a result, religious organizations without a central government would be unable to hire workers from abroad. However, as explained in the preamble to the proposed rule, the definition of "religious denomination" does not

require a hierarchical governing structure. 72 FR at 20445. 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. 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 such 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. Minor changes were made to the definition as set forth in the proposed rule for clarity and the provision regarding group tax-exemptions was moved to the definition of tax-exempt organization where it is more germane.

#### 4. Religious Occupation

The proposed rule provided examples of qualifying religious occupations. Many commenters stated that the list of example occupations was too narrow and that the examples applied only to Judeo-Christian religions. Those commenters suggested broadening the examples to account for religions other than Judeo-Christian faiths.

USCIS acknowledges the commenters' concerns regarding the examples. The list was neither exhaustive nor more than exemplary. USCIS has, however, removed the list of examples because it created confusion about the scope of the definition of "religious occupation." The list was only illustrative and not necessary to the rule. As discussed in the original rules implementing the religious worker categories, and in the proposed rule, the list was derived from the legislative history. See 72 FR at 20446.

When adjudicating petitions, USCIS will rely on the general definition of a "religious occupation." Petitioners must demonstrate that the occupation relates primarily to a traditional religious function that is recognized as a religious occupation within the denomination.

A significant number of commenters opposed the inclusion of all administrative positions in the list of positions that may not be found to be religious occupations. The comments stated that, unlike secular administrators, religious administrators exercise religious leadership and policymaking duties that may directly affect the practices of the denomination. USCIS generally agrees with the commenters; thus, this rule does not disqualify all administrative positions, but only those positions that are

primarily administrative. Under the rule, a position including limited administrative duties may qualify as a religious occupation, provided such duties are incidental to substantive, traditionally religious functions.

One commenter was concerned that the proposed regulation excludes "those who sell literature" as a qualifying religious occupation because distribution of literature can be an inherently religious activity. The notion of canvassing, including selling literature, has a long history in the United States and USCIS acknowledges that history. USCIS does not agree, however, that selling literature alone is a basis for admission of an alien to the United States as a religious worker, but has removed "those who sell literature" from the list of excluded occupations as well as the other non-qualifying examples. Fundraising is prohibited from qualifying as a religious occupation, but whether a position that involves selling literature may qualify as a religious occupation will depend on the evidence submitted.

USCIS does not intend to limit legitimate religious vocations under this final rule, and USCIS will consider all of the relevant law in making such determinations. In this final rule, USCIS is establishing requirements for determining whether any religious organization may seek the admission of an alien into the United States for religious vocation and other related purposes under a specific visa classification. These regulations are designed to establish the bona fide nature of the organization and the occupation under the statute, and the petitioning organization is responsible for establishing facts supporting its application. Moreover, the petitioning organization is responsible for establishing that the specific occupation requires specific actions as a part of the beliefs of that organization, and that those evidentiary elements must lead USCIS to conclude that any limitation in the regulation could not be applied to the applicant in light of constitutional or statutory limitations.

#### 5. Religious Vocation

The proposed regulation defined "religious vocation" as "a formal lifetime commitment to a religious way of life." Several commenters objected to the lifetime requirement, stating that religious vocations in many religious denominations do not require a lifetime commitment. Thus, some commenters concluded that employees who will practice a religious way of life during their proposed period of stay in the United States, but who do not

necessarily make a lifetime commitment to such a life, such as missionaries or novitiates, could not qualify as religious workers. Additionally, the commenters interpreted the proposed definition of "religious occupation" as requiring employees to receive traditional salaries, thus excluding employees who receive non-salaried compensation such as room and board. The commenters also interpreted the "religious occupation" and "vocation" definitions as excluding nonimmigrants who rely on self-support. Due to the confusion over the proposed definitions of both "religious vocation" and "religious occupation," some commenters concluded that certain types of religious workers would not be able to qualify for visas as they would not be covered by either of the proposed definitions.

USCIS will retain the definition of "religious vocation" as stated in the proposed rule; however, as explained in detail below, clarifications in the compensation requirements for all nonimmigrant religious workers were made in response to commenters' concerns. USCIS clarifies that, under certain circumstances, non-salaried support may qualify as compensation. Additionally, USCIS clarifies that under certain circumstances, as explained in detail below, nonimmigrant beneficiaries who will be self-supporting may qualify for admission under the "occupation" or "religious vocation" definitions.

Missionaries and novitiates who cannot be classified as religious workers coming to the United States to perform a religious vocation because vocations in their denomination do not require a lifetime commitment should nevertheless be able to qualify as religious workers under the "religious occupation" definition.

#### C. Compensation Requirements

USCIS proposed to add a requirement that the alien's work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of "religious occupation" to require that an occupation be "traditionally recognized as a compensated occupation within the denomination." Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters' concerns, USCIS is clarifying that

compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded. See IRC section 119, 26 U.S.C. 119; 26 CFR 1.119-1 (exclusion for lodging provided for convenience of employer). The IRS applies special rules for housing, for example, to members of the clergy. Under these rules, clergy do not include in income the rental value of a home (including utilities) or a designated housing allowance provided to clergy as part of their pay. The home or allowance must be provided as compensation for services as an ordained, licensed, or commissioned minister. The rental value of the home or the housing allowance must be included as earnings from self-employment on Schedule SE (Form 1040) if the clergy is subject to the self-employment tax. See generally Internal Revenue Service, *Social Security and Other Information for Members of the Clergy and Religious Workers*, Publication 517.

Commenters objected to being required to submit tax documents to demonstrate non-salaried compensation.

USCIS intends to apply the documentation and determinations made by the IRS and the basis for making those determinations as closely as possible. USCIS does not possess the expertise to make determinations of tax-exempt status or the fine points of gross and adjusted income. The comments have not provided a basis for USCIS to make these determinations without a record based on the application of the existing tax laws to both organizations and individuals.

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud,

permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to perform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa:

Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted extensions of temporary stay in increments of not more than six months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of a religious denomination may be granted extensions of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations.

8 CFR 214.2(b)(1). See also 9 FAM 41.31 N9.1. Therefore, self-supporting religious workers who are not eligible for admission to the United States as R-1 nonimmigrant religious workers may pursue admission in the B-1 classification.

#### D. Petitioning Requirements

The proposed rule introduced the new requirement that a petitioner must file a petition on the alien's behalf with USCIS before the Department of State (DOS) will issue a nonimmigrant visa to the alien. Previously, aliens seeking nonimmigrant religious worker status could apply directly to USCIS or, from out of the country, through the DOS. Many commenters questioned whether USCIS has the statutory authority to require religious organizations to file petitions for nonimmigrants. While nothing in the INA specifically states that a petition is required for nonimmigrant religious workers, nothing prohibits it. In addition, the Secretary of Homeland Security has the general authority to promulgate regulations to implement the immigration laws, INA section 103(a)(1), 8 U.S.C. 1103(a)(1), and must specifically, under INA section 214(a), 8

U.S.C. 1184(a), prescribe by regulation the time and under what conditions a nonimmigrant may be admitted to the United States. Congress has found it reasonable to implement a petition requirement in other nonimmigrant programs. USCIS is implementing the petition requirement for nonimmigrant religious workers as a way to determine that a minister will be admitted to the United States to work for a specific denomination and that other religious workers will be admitted to work for a specific religious organization at the request of that organization. Requiring a petition for every nonimmigrant will also deter fraud and allow USCIS to detect fraud earlier in the process. Therefore, the final rule retains the nonimmigrant petition requirement.

This final rule also includes a provision for a petitioner to appeal a determination by USCIS to deny a petition. See 8 CFR 214.2(r)(17). USCIS also is establishing a process for USCIS to revoke a petition once granted, and for the petitioner to appeal a revocation decision. 8 CFR 214.2(r)(18) and (19).

Numerous commenters stated that, for various reasons, the new petitioning requirement would delay nonimmigrant visa approvals. Commenters also said that the Department of State (DOS) has substantial expertise adjudicating religious worker visas; consequently, religious worker visas are promptly processed (a result lauded by the commenters), while still identifying potential fraud. Some commenters suggested that, if petitions are required for all religious workers, the final rule should limit the amount of time that USCIS takes to process the petitions. Additionally, several commenters recommended that to speed processing of petitions, USCIS should pre-certify religious organizations as valid employers.

USCIS acknowledges the concerns of commenters that requiring a petition for all religious workers could delay issuing a visa. However, the petition requirement is essential to preventing fraud in the religious worker program. While DOS consular officers do have experience with nonimmigrant religious workers, they are not in a position to determine the bona fides of a religious organization located in the United States. Requiring an approved petition will assist consular officers in making a decision on religious worker nonimmigrant visa applications. Furthermore, at this time, the USCIS California Service Center is processing all religious nonimmigrant and immigrant religious worker petitions. This specialization promotes expertise

that leads to prompt processing of religious worker petitions.

Several commenters asked USCIS to establish a blanket approval or pre-certification program for religious organizations. USCIS understands the commenters' concerns. A pre-certification process could benefit religious organizations and USCIS, by reducing the petitioning burden on bona fide non-profit religious organizations. However, the proposed rule did not include a blanket approval or pre-certification program. USCIS must carefully evaluate how such a process would work, establish criteria that a religious organization would have to meet, determine a pre-certification validity period, and promulgate regulations governing requirements to be pre-certified. An agency is not required to adopt a final rule that is identical to the proposed rule and in fact agencies are encouraged to modify proposed rules as a result of the comments they receive. However, final rules ultimately adopted can only include those changes that the interested public could view as logical based on what was proposed. In this case, USCIS does not believe that the proposed rule provided sufficient notice that the final rule may contain pre-certification requirements and will thus not adopt the commenters' suggestion. USCIS will consider approaches to addressing the issues presented by the comments, including a possible future rulemaking to provide for a pre-certification process. The final rule does not preclude USCIS from considering the history of an organization's petitions in determining whether to grant a specific petition, and USCIS may consider that history in each individualized consideration.

#### *E. On-Site Inspections*

Several commenters supported on-site inspections that are tailored to detect fraud, but do not intrude on religious organizations' privacy. However, a number of commenters questioned on-site inspection procedures, requirements, and potential consequences. The comments stated that the regulations should establish deadlines for USCIS to complete on-site inspections; otherwise, petition processing backlogs could result. Other comments said the results of site inspections should be reviewable. Some argued that the proposed rule provided no guidelines regarding the scope of on-site inspections. The undefined scope, according to some comments, might encourage overzealousness by USCIS or lead to denials solely based on the results of an on-site inspection.

Commenters objected to the prospect of unannounced site inspections.

USCIS, like all Federal agencies, must carry out administrative activities that ensure the integrity of the benefit programs it administers. On-site inspections are a useful tool to verify the legitimacy of information contained in applications and petitions, the continued eligibility for a benefit, and the legitimacy of petitioners. Therefore, this rule does not modify the proposed regulations pertaining to on-site inspections. If an on-site inspection yields derogatory information not known to the petitioner, USCIS will issue a Notice of Intent to Deny (NOID) the petition. See 8 CFR 103.2(b)(16). The petitioner may then submit additional documentation that may rebut the derogatory evidence. In addition, a denial of a petition may be appealed to the USCIS Administrative Appeals Office. See 8 CFR 204.5(n)(2) and 214.2(r)(13).

USCIS acknowledges that processing delays occurred when USCIS inaugurated the on-site inspection program. As USCIS has gained experience with the program, however, delays have decreased. Additional resources, including personnel, have been dedicated to the program and process improvements. USCIS intends to commit more resources and personnel to the program in the near future. To determine the status of a petition, petitioners may consult the USCIS Web site or contact the National Customer Service Center to obtain the status of petitions. If the National Customer Service Center cannot provide an answer, the inquiry will be referred to the California Service Center customer service division.

The proposed rule and the final rule use a list of different terms to describe the on-site inspections. The list was revised in the final rule to include more commonly used terms such as compliance review. The intent is not to assign one specific name, but to give notice to petitioners that such reviews may be part of the religious worker program.

To allay commenters' concerns about possible abuse of the on-site inspection process, USCIS will establish additional communications processes for petitioners to report alleged abuses. Information regarding this will be posted on the USCIS Web site. Waste, fraud, and abuse should also be reported to the DHS Inspector General.

#### *F. Religious Freedom Restoration Act of 1993 (RFRA)*

Commenters asserted that the proposed regulation would violate the

First Amendment, Const. of the United States, Amdt. I (1791), and the Religious Freedom Restoration Act of 1993, Public Law 103-141, sec. 3, 107 Stat. 1488 (Nov. 16, 1993) (RFRA), found at 42 U.S.C. 2000bb-1, by placing a substantial burden on a religion that is not in the furtherance of a compelling government interest, or at least not furthered by the least restrictive means. Some commenters stated that preventing fraud was commendable but that a compelling government interest has not been established. Several commenters said that filing petitions for nonimmigrants or having to request an extension of status after only one year would place undue financial and paperwork burdens on religions. Additionally, the commenters stated that the proposed definitions of religious occupation and religious vocation prohibited their denominations from utilizing the program.

USCIS disagrees with the specific notion that the final rule violates the RFRA. The RFRA provides:

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except \* \* \* if it demonstrates that application of the burden to the person—

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.

Public Law 103-141, sec. 3, 42 U.S.C. 2000bb-1. The final rule is intended to permit religious organizations to petition for admission of religious workers under restrictions that have less than a substantial impact on the individual's or an organization's exercise of religion. A petitioner's rights under RFRA are not impaired unless the organization can establish that a specific provision of the rule imposes a significant burden on the organization's religious beliefs or exercise. Further, this rule is not the sole means by which an organization or individual may obtain admission to the United States for religious purposes, and DHS believes that the regulation, and other provisions of the INA and implementing regulations, can be administered within the confines of the RFRA. An organization or individual who believes that the RFRA may require specific relief from any provision of this regulation may assert such a claim at the time they petition for benefits under the regulation.

Nor does this final rule impose a "categorical bar" to any religious organization's petition for a visa or alien's application for admission.



Instead, the rule sets forth the evidentiary standards by which USCIS will adjudicate nonimmigrant and immigrant petitions.

USCIS also does not believe that the new requirements will reduce the diversity or types of religious organizations that practice in the United States or the types of religious workers whom religious organizations could hire. Changes have been made so that the final definitions of "religious occupation," "religious vocation," "minister," and "denomination" will not prevent religious organizations from using the religious worker program as some commenters claimed.

Additionally, rather than the proposed one year initial period of admission and two extensions of two years each, the final rule permits up to 30 months for the initial period of admission and one extension of up to 30 months. Therefore, the final rule imposes a much smaller financial and paperwork burden on petitioners than the proposed rule.

Eradicating fraud where fraud has been determined to exist in one-third of nonimmigrant visa petitions, as discussed in the proposed rule, is a compelling government interest to ensure the integrity of the immigration process as well as for the protection of national security. See 72 FR at 20442. Therefore, the final rule retains the requirements that a religious organization file a petition for each religious worker and submit an IRS determination letter establishing the organization's tax-exempt status. Additionally, USCIS will maintain the discretion to conduct on-site inspections as USCIS believes they are the most effective and least restrictive means of combating fraud in the religious worker program.

USCIS will consider all of the factual evidence presented in support of a petition for a religious worker under the provisions of the rule. After reviewing the comments and the applicable law, however, USCIS does not believe that the evidentiary requirements of the rule constitute a violation of the RFRA.

#### G. Concurrent Filing

Some commenters suggested that the final regulation provide an option for special immigrant religious workers to concurrently file Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, and Form I-485, Application to Register Permanent Residence or Adjust Status. The commenters asserted that concurrent filing would speed up the process of granting permanent residence to religious workers. One commenter requested that concurrent filing not be permitted.

The comments seeking to allow concurrent filing have not been adopted. The Department is under a statutory mandate pursuant to the Special Immigrant Nonminister Religious Worker Program Act, S. 3606, Public Law No. 110-391 (October 10, 2008), to issue this final rule "to eliminate or reduce fraud" in regard to the granting of special immigrant status to nonminister religious workers. The bar to concurrent filing is a valuable fraud deterrent in the entire special immigrant religious worker program. Prohibiting concurrent filing of the visa petition and adjustment of status application for special immigrant religious workers dissuades the filing of fraudulent petitions by or for ineligible and/or inadmissible aliens who might otherwise gain valuable benefits such as employment authorization while an immigrant petition is pending. For this reason, the Department believes that not allowing concurrent filing in this arena is necessary to protect the integrity of the religious worker program for eligible, bona fide religious organizations and their eligible employees.

Concurrent filing was implemented as an accommodation for business petitioners and to add efficiency to processing large backlogs for Form I-140, Immigrant Petition for Alien Worker, that adversely impacted, among others, aliens wishing to adjust their status in the United States who could not file Form I-485 until the Form I-140 was approved. 67 FR 49561 (July 31, 2002). The policy decision to allow concurrent filing for Forms I-140 was based on research into business employment-based visa programs of the United States. The research showed that recruiters found that many talented employees worldwide were increasingly unwilling to tolerate the long waits and uncertainty entailed in immigrating to the United States. When professional workers encounter long delays, United States employers are at a disadvantage because foreign job candidates may decide to accept employment in countries with more expeditious employment-based immigration programs. Concurrent filing has also been allowed if there is a current priority date in family-based preference categories or if an alien qualifies as an immediate relative. An underlying goal of the family-based visa program is the unification of families and concurrent filing supports this goal.

These rationales for allowing concurrent filing are not present in the religious worker context. Additionally, USCIS is not allowing concurrent filing given the high incidence of fraud in the

program. USCIS did not propose to allow concurrent filing and has not added provisions in the final rule to provide for it. The United States is defending its previous decision not to allow concurrent filing of Forms I-360 and I-485, and has considered the litigation challenging that decision in reiterating that decision in this rulemaking.

#### H. Nonimmigrant Intent

The proposed rule would have clarified that an alien may come legitimately to the United States for a temporary period as an R nonimmigrant, depart voluntarily at the end of the period of authorized stay, and at the same time, lawfully seek to become a permanent resident of the United States. Several comments were received that generally supported this proposed provision. The final rule retains a provision on nonimmigrant intent that states that an R classification may not be denied solely because a labor certification or preference petition, including a Form I-360, has been filed by or on behalf of the alien. However, the provision has been rewritten for clarity and readability.

#### I. Changes Unique to the Special Immigrant Religious Worker Classification

The proposed rule recognized that a break in the continuity of religious work during the two years immediately preceding the filing of the petition would not affect eligibility if the alien had been employed as a religious worker, the break did not exceed two years, and the nature of the break was for further religious training or for sabbatical and did not involve unauthorized work in the United States. Several commenters questioned whether the break in continuity would also apply to sick leave, pregnancy leave, spousal care, or vacations. As these events, for example sick leave and vacation, are typical in the normal course of any employment, they will not be seen as a break of the two-year requirement as long as the alien is still considered employed during that time.

#### J. Changes Unique to the Nonimmigrant Religious Worker Classification

Currently, the initial admission period for nonimmigrant petitioners is up to three years, with a single extension of up to two years. USCIS proposed to reduce the initial admission to no more than one year with two potential extensions of up to two years each, not to exceed five years total. Commenters strongly objected to the proposed reduced period of admission

and shortened periods for extensions. The commenters expressed numerous reasons why this change would be burdensome. For example, filing three petitions would markedly increase costs to petitioners, such as USCIS form filing fees and legal fees, and the initial one-year admission and the two-year extensions would make it difficult to plan hiring needs and training programs.

Commenters made a variety of recommendations: Retain the current admission and extension scheme; provide an initial admission of up to two years with one potential extension of up to three years; or, regardless of the lengths of the initial admission and potential extension, adopt a pre-certification program. In response to the comments, this final rule allows an initial admission of up to 30 months with one extension of up to 30 months. Allowing for a maximum period of admission of 30 months addresses the concerns of the commenters for a longer time period and simplifies program administration, as the maximum period will be the same whether it is an initial admission or an extension. The periods of admission and extension will be granted as determined by both the organization's need for the religious worker's services and the regulatory limitations. As limited by statute, the maximum total period of admission will continue to be five years. *See* INA section 101(a)(15)(R)(i), 8 U.S.C. 1101(a)(15)(R)(i).

#### K. Fraud Findings

Some commenters stated that when writing this rule, USCIS should not have relied on the GAO Report, *Issues Concerning the Religious Worker Visa Program*, GAO/NSIAD-99-67 (March 26, 1999), and the 2005 USCIS Fraud Detection and National Security (FDNS) benefit fraud assessment report (BFA). Commenters stated that the two reports used invalid methodologies, relied on anecdotal evidence, and overstated the amount of fraud. Although many commenters criticized the GAO and BFA reports, none of the commenters provided alternative statistical analyses to demonstrate that fraud is less extensive than what USCIS has stated. The BFA conducted by USCIS FDNS used a valid methodology and did not rely on anecdotal evidence; instead, the BFA utilized a random sample formula provided by the DHS Office of Immigration Statistics to establish a statistically valid sampling of cases that allowed USCIS to estimate the level of fraud in the religious worker program. The BFA sampling consisted of a rate of occurrence of not more than 20%, a

confidence level of 95%, and a reliability factor of plus or minus five percent. The established fraud rate of 33% for the I-360 Religious Worker program represents a statistically valid figure based on generally accepted statistical reporting guidelines. These comments also do not suggest specific changes to the rule. The two referenced reports support promulgation of this rule and the comments provide no evidence and raise no issues that cause USCIS to reconsider these conclusions. USCIS did not make any changes to the final regulation as a result of these comments.

#### L. Miscellaneous

Several commenters stated that requiring petitioning organizations to report the number of members of the prospective employer's organization and the number and positions, with brief descriptions, of employees in the prospective employer's organization would excessively burden large organizations. USCIS acknowledges the commenters' concerns. However, documenting the number and positions of employees is a useful tool for verifying the existence and validity of a prospective employer; thus, the reporting requirement has been retained but modified to require only the number and a summary of the responsibilities of the employees who work at the same location where the beneficiary will work. USCIS may still request a detailed list of employees and a brief description of their duties if it determines in its discretion that such information is needed.

Several commenters suggested that USCIS reinstate Premium Processing for R-1 nonimmigrant religious workers. The Premium Processing Service provides faster processing of certain employment-based petitions and guarantees a 15-calendar day processing time. Due to the complexities with adjudicating R-1 visa petitions, USCIS cannot reasonably ensure a level of processing service within 15 calendar days. Given that USCIS is conducting on-site inspections, USCIS cannot, at this time, reasonably guarantee 15 day processing. USCIS continues to assess whether it is possible to provide this level of service for nonimmigrant religious worker petitions.

### III. Regulatory Requirements

#### A. Administrative Procedure Act

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that an agency publish a final rule no later than 30 days before its effective date. The APA, however, provides an exception to the

delayed-effective date requirement where the agency has good cause to make the rule effective upon the date of publication. As discussed above, the special immigrant religious worker provisions of section 274A of the INA, expired on September 30, 2008. Under section 101(a)(27)(C)(ii)(II) and (III) of the Act, 8 U.S.C. 1101(a)(27)(C)(ii)(II) and (III), to immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant or adjust their status to permanent resident while in the United States by no later than September 30, 2008. Beginning on October 1, 2008, all new nonminister petitions and applications have been rejected without prejudice to the filing of a new petition or application upon the effective date of this rule.

On October 10, 2008, the President signed into law Public Law 110-391 "Special Immigrant Nonminister Religious Worker Program Act." This Act extends the sunset date for special immigrant nonminister religious workers until March 6, 2009. However, the amendment will not take effect until the Secretary of Homeland Security certifies to Congress, and publishes a notice in the **Federal Register**, within 30 days of enactment of the Act, that this final rule has been issued and is effective.

DHS had determined that it would be contrary to the public interest to delay the re-authorization of the special immigrant nonminister religious worker program to allow for a 30-day effective date for this rule. Accordingly, DHS is making this rule effective immediately upon publication in the **Federal Register**. All cases pending on the rule's effective date and all new filings will be adjudicated under the standards of this rule. If documentation is required under this 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.

#### B. Regulatory Flexibility Act

For the proposed rule, USCIS estimated that it would receive approximately 22,338 petitions annually from "small entities" as defined under 5 U.S.C. 601. USCIS determined that the cost to a religious or affiliated bona fide organization for a religious worker petition of \$190 represented a small percentage of the organization's total annual wage cost for the beneficiary and an even smaller percentage of the petitioning organization's overall operating budget. Also, the additional

burden in terms of time needed to complete attestation and certification requirements was estimated to be insignificant. Additionally, USCIS did not determine the effect on organizations that would have to pay application fees to the IRS but invited comments on the scope of these costs and more accurate means for defining these costs. Therefore, in the proposed rule USCIS stated that any impact on religious or affiliated organizations or individuals to comply with these requirements is minimal and this rule will not have a significant economic impact on a substantial number of small entities.

USCIS does not foresee the rule having a significant economic impact on small entities. Thus, this rule does not put forth alternatives to minimize impacts. The rule benefits the United States by reducing the risk of fraud in the religious worker program. Cost increases, if any, due to the revised requirements are not expected to significantly affect entities and thus will not have a measurable impact on their ability to carry out religious activities.

USCIS invited the public to comment on the extent of any potential economic impact of this rule on small entities, the scope of these costs, more accurate means for defining these costs, ways that a religious organization could demonstrate that it meets the rule's requirements without providing an IRC section 501(c)(3), 26 U.S.C. 501(c)(3), letter and without USCIS having to analyze sizeable paperwork, and the estimated cost to petitioning religious organizations and bona fide organizations affiliated with a religious denomination to comply with the new religious worker petition requirements and prepare for the on-site inspections. In response to those requests, USCIS received a comment on the cost of hiring outside parties to prepare petitions. However, USCIS believes that this rule imposes no requirements that should increase the need to hire parties to prepare and file religious worker petitions. No additional cost estimates were provided and USCIS received no additional information or data in response to the request for data on the economic impact of this rule on small entities, the scope of these costs, or more accurate means for defining these costs. USCIS also received several comments on the requirement that petitioners submit a copy of the IRC section 501(c)(3) status determination letter from the IRS, and has responded to those and other comments in another section of the preamble to this final rule. The significance of the impact of the compliance costs that requiring the IRC

section 501(c)(3) determination letter adds to regulated entities under this rule is discussed below. Several changes were made to the final rule as a result of comments received as discussed in that section.

*Size of affected entities.* This rule affects religious organizations under NAICS code 813.110. 13 CFR 121.201 (NAICS code 813.110—Religious Organizations). The size considered small in that grouping is those entities having average annual revenue of under \$6.5 million per annum. While data on the actual average annual revenue of the participants in the religious immigrant and nonimmigrant worker program is lacking, most of the affected organizations are thought to be small entities as defined under the RFA.

*Number of affected entities.* USCIS records from the past three years indicate that an average of 6.4 workers have been approved per organization per year. The total estimated volume of petitions to be received by USCIS after this rule is projected at 23,200. Thus, an estimated 3,625 affected religious entities will be affected by this rule.

*Economic impact per entity.* USCIS determined that this rule will result in USCIS fee collections increasing by about \$4.5 million per year and information collection costs increasing by about \$1.3 million per year, for a total of \$5.8 million in added costs. The average cost per entity imposed by this rule will be \$1,600. Also, this analysis assumes that a new IRC section 501(c)(3), 26 U.S.C. 501(c)(3), status determination letter from the IRS, with a fee of \$750, will be paid by each entity each year, bringing total costs per entity resulting from this rule to \$2,320.<sup>4</sup>

*Determination of no significant impact.* The RFA does not define "significant" or "substantial" and Small Business Administration (SBA) guidance provides that what is "significant" or "substantial" depends on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact. Guidelines provided by the SBA Office of Advocacy suggest that an added cost of more than one percent of the gross revenues of the affected entities in a particular sector may be a significant impact. The total added cost per firm of this rule of \$2,320 is 0.04% of the \$6.5 million threshold for a

<sup>4</sup> Assuming a 100% requirement for this cost will ensure a liberal costs calculation for ascertaining the significance of this rule's impacts on small entities. Nonetheless, while USCIS has no way to estimate how many petitioners will have to obtain IRC section 501(c)(3), 26 U.S.C. 501(c)(3), determination letters, the actual number will be lower than 100% of all petitioners.

religious organization to be considered small.

Guidelines suggested by the SBA Office of Advocacy also indicate that the impact of a rule could be significant if the cost of the regulation exceeds five percent of the labor costs of the entities in the sector. Since the religious worker program is an employment based visa program, DHS analyzed the additional costs imposed by this rule on the petitioning organizations relative to the costs of the typical employee. According to the Bureau of Labor Statistics, the mean annual salary of clergy is \$43,060, for Directors of Religious Activity it is \$37,570, and for other religious workers it is \$29,350.<sup>5</sup> Based on an average of 6.4 religious workers petitioned-for per organization, the average annual cost per religious worker petitioned-for by the entity will be \$363 per worker. Thus, the costs per worker imposed by this rule represent only 0.84% of a minister's average salary, 0.97% of a Director of Religious of Activity's annual salary, 1.24% of the salary for other religious workers, and only 3.1% of the employee's annual salary expense if the religious worker is compensated at the Federal minimum wage of \$5.85 per hour for 2,000 hours per year. Therefore, using both average annual labor costs and the percentage of the affected religious entities' annual revenue stream as guidelines, the additional regulatory compliance costs imposed by this rule are not significant. For these reasons, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

#### C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100

<sup>5</sup> U.S. Department of Labor Bureau of Labor Statistics, May 2006 National Occupational Employment and Wage Estimates. Available online at [http://www.bls.gov/oes/current/oes\\_nat.htm#b00-0000](http://www.bls.gov/oes/current/oes_nat.htm#b00-0000).

million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*E. Executive Order 12866 (Regulatory Planning and Review)*

This rule has been designated as a “significant regulatory action” by the Office of Management and Budget (OMB) under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, an analysis of the costs and benefits of this rule has been prepared and submitted to the Office of Management and Budget (OMB) for review. That analysis is as follows.

1. Background

The religious worker program is rooted in the regulation of labor

markets. The specific market failure addressed by this rule is the inability of current program participants to self-police their behavior and avoid engaging in acts of fraud and misrepresentation.

The impacts of having a sufficient or insufficient supply of religious workers tend to be more qualitative for the ability of the particular religion and its members to carry on its functions, rituals, and traditions in the United States. Aside from the need for workers, many religions believe it is important for their members in the United States to intermingle with their members from outside the United States in order for an exchange of ideas to take place and for their United States members to receive the intangible benefits that are felt to inure from exposure to diverse cultures. The benefits of such a program tend to be intangible from an economic standpoint but very concrete to devout

followers of a particular religion who may be harmed by the lack of availability of, or benefit from having, a qualified worker to carry out a defined function in their particular faith. This analysis deals, however, with only the changes made by this rule, not the benefits and costs of the program as a whole. DHS has assessed both the costs and benefits of this rule as follows:

2. Recent Figures

*Form I-360.* A religious organization seeking a permanent religious worker or an alien seeking to perform religious work permanently in the United States files Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with USCIS. Table 1 shows the number of Form I-360 filings with USCIS for a religious worker in the most recent three fiscal years.

TABLE 1—FORM I-360 FILINGS FOR IMMIGRANT RELIGIOUS WORKERS<sup>6</sup>

Fiscal year	2005	2006	2007	Average <sup>7</sup>
Petitioning Organizations .....	308	182	88	193
Petitions Received .....	4,466	5,242	4,382	4,697
Petitions Approved .....	3,816	2,828	1,086	2,577

*Form I-129.* For an alien currently in the United States to work as a nonimmigrant religious worker, the

religious organization and alien may file a Form I-129, Petition for Nonimmigrant Worker. Table 2 shows

the number of Form I-129 filings with USCIS for a religious worker in the most recent three fiscal years.

TABLE 2—FORM I-129 FILINGS FOR NONIMMIGRANT RELIGIOUS WORKERS<sup>8</sup>

Fiscal year	2005	2006	2007 <sup>9</sup>	Average
Petitioning Organizations .....	562	493	416	490
Petitions Received by USCIS .....	5,918	5,749	4,370	5,346
Petitions Approved by USCIS .....	4,866	3,685	882	3,144
Average Number of Workers Approved for Each Organization .....	8.7	8.9	2.1	6.4

*Consular or Port of Entry Processing.* Aliens outside the United States may seek an R-1 visa directly from the United States consulate or embassy abroad or, if visa exempt, be admitted to

the United States as a nonimmigrant religious worker by the United States at a United States port of entry. Table 3 shows the number of religious worker visas requested and approved by DOS

without a petition being filed with USCIS in the three most recent fiscal years.

TABLE 3—RELIGIOUS WORKER VISAS PROCESSED BY DOS

Fiscal year	2005	2006	2007	Average
Petitions Received by DOS .....	12,473	12,944	16,487	13,968
Petitions Approved by DOS .....	8,538	8,716	10,372	9,209

*R-2 Visas for Religious Worker Family Members.* Table 4 shows the aliens

granted admission into the United States by DOS as derivative family

members of religious workers in the three most recent fiscal years.

<sup>6</sup> A religious organization may file petitions for several potential religious workers; however, the organization must file a separate petition for each worker.

<sup>7</sup> USCIS does not know why there has been a precipitous drop in the number of Form I-360 petitioning organizations, petitions received, and petitions approved in the past three fiscal years.

<sup>8</sup> Includes Form I-129 filings for extensions of current R-1 status.

<sup>9</sup> Petitions approved in 2007 lagged as a result of uncompleted site inspections.

TABLE 4—DERIVATIVE FAMILY MEMBERS (R-2) VISAS

Fiscal year	2005	2006	2007	Average
Petitions Received by DOS .....	5,118	5,017	4,931	5,022
Petitions Approved by DOS .....	3,267	3,234	3,216	3,239

For relatives of non-immigrant religious workers currently in the United States to receive R-2 status, a USCIS Form I-539, Application To Extend/Change Nonimmigrant Status, must be filed. In 2005, 42 Religious Workers filed an I-539 requesting a change of status for family members and

eight were approved. In 2006, 41 Form I-539 filings were received and five were approved; and in 2007, 43 were requested, and four approved. Thus, an average of 42 R-2 visas through Form I-539 were requested and six approved per year in the three most recent fiscal years.

*Totals.* In 2005, 16,679 aliens were approved to enter into or stay in the United States as Religious Workers (R-1) and family members (R-2). In 2006, 15,640 were approved, and in 2007, 14,474 entered legally, for an average of 15,598 religious worker visas per year.

TABLE 5—TOTAL RELIGIOUS WORKERS AND RELATIVES

Fiscal year	2005	2006	2007	Average
Petitions Received by DOS and USCIS .....	23,551	23,748	25,831	24,376
Petitions Approved by DOS and USCIS .....	16,679	15,640	14,474	15,598

3. Projected Petition Volume and Total Fee Collections

USCIS assumes that the demand for religious workers will remain constant. Although this rule imposes a new petitioning requirement, nothing in this rule is expected to reduce or decrease the attractiveness of the program from a petitioner's standpoint. Therefore, the future number of petitions filed annually and the number of religious or affiliated organizations seeking workers should be consistent with recent trends. The predicted future volumes of petitions and application following the implementation of the changes in this rule are as follows:

*Form I-360.*

In the three most recent fiscal years USCIS has received an average of 4,697 petitions (Form I-360) either from religious organizations seeking permanent religious workers or from aliens seeking to perform religious work permanently in the United States.

Filing volume for Form I-360 remained fairly constant from 2005 through 2007. USCIS does not believe that this rule will result in any additional decreases in volume from that seen in recent years. As stated in the proposed rule, the level of fraud in the immigrant religious worker program was found to be 33% of cases reviewed. This final rule institutes requirements and procedures to reduce fraud in the program. 72 FR at 20444. Ultimately, as this rule's anti-fraud measures take full effect, the filing of fraudulent petitions may be discouraged to the point that there is a noticeable reduction in the volume of petitions filed with USCIS. However, USCIS started conducting discretionary site inspections for

religious worker petitions in 2006 and there have been recent publicized arrests associated with criminal activities and fraud in the religious worker program. Filing volume has not decreased. This rule was drafted to avoid overburdening legitimate petitioners and the changes in this rule are not expected to reduce or decrease the attractiveness of the program to eligible petitioners. Furthermore, DHS estimates that profession-wide demand for religious workers will remain constant. Therefore, USCIS estimates that filing volume for I-360s in the next few years will be close to the average received in the three most recent fiscal years.

*Projected annual Form I-360 Volume:* 4,700.

*Total Fee Receipts:* \$1,762,500.

*Change in Form I-360 Fee Collections Resulting from the Final Rule:* \$0.

*Form I-129 for a Nonimmigrant in the United States.* This rule requires that a petition be submitted to and approved by USCIS before a beneficiary who is currently in the United States in another type of non-immigrant status can change his or her status to that of a religious worker, or if here as a religious worker, extend that status. This is not a change from the previous practice. Thus, the future volume of Forms I-129 filed for individuals already in the United States will be the historic number of I-129 filings. As shown in Table 2 above, USCIS has received an average of 5,346 form I-129s requesting nonimmigrant religious workers per year over the past three fiscal years. However, filing volume decreased by 3% percent from 2005 to 2006, and by another 24% from 2006 to 2007. USCIS does not believe

that this rule will affect this trend and that the number received in 2007 most likely reflects future volumes. Thus, approximately 4,500 petitions for nonimmigrants in the United States are expected per year following this rule.

*Form I-129 for a Nonimmigrant Abroad.* This rule now requires that a Form I-129 be submitted to and approved by USCIS before an individual who lives abroad may come to the United States as a nonimmigrant religious worker. The number of Form I-129 filings for a nonimmigrant religious worker living abroad can be estimated based on the number of aliens recently applying for admission to the United States as a nonimmigrant religious worker with DOS. In 2005, 12,473 persons applied for R-1 visas, in 2006, 12,944 applied, and for 2007, 16,487 applied. That represents a 4% percent increase in 2006 over 2005, and a 27% increase in 2007. USCIS believes that the petition requirement will reduce the number of petitions received slightly from 2007 numbers to approximately what they have averaged over the previous three years, or around 14,000 R-1 petitions per year. Thus, based on historic I-129 filing volume plus those who now must file, total Form I-129 filings projected per year in this analysis are as follows:

*Projected annual Form I-129 volume:* 18,500.

*Total Fee Income:* \$5,920,000.

*Change in I-129 Fee Collections Resulting from the Final Rule:* \$4,480,000.

*Relatives—Nonimmigrant.* An average of 42 Form I-539 filings per year were received by USCIS in the three most recent fiscal years for immediate

relatives of the alien in the United States with no notable trend upward or downward in volume. DOS received an average of 5,022 requests to bring a family member of a religious worker into the United States in the three most recent fiscal years, with a two percent per year downward trend over that period. These trends are expected to remain consistent with the recent past. Thus, average annual Form I-539 volumes<sup>10</sup> for this rule are expected to be as follows:

*Projected annual Form I-539 volume:* 50.

*Total Fee Income:* \$15,000.

*Increase in I-539 Fee Collections Resulting from the Final Rule:* \$0.

*Relatives—Immigrant.*

Special Immigrant Religious Workers may include a dependent spouse or child on the same Form I-360 as the worker. However, if the child is over 21 or the relationship or marriage occurred after the beneficiary of the approved I-360 becomes a lawful permanent resident, then the lawful permanent resident can petition for their relative on a separate USCIS Form I-130, Petition for Alien Relative, plus a \$355 fee per form. USCIS projects an average annual filing volume for Form I-360 of 500 petitions. USCIS has no records on the average number of people who enter the United States as relatives of special immigrant religious workers either via the I-360 or I-130 process. Regardless, USCIS knows no reason why the number of those who do would not remain about the same as it has been recently. Accordingly, this rule is not expected to have much of an impact on the number of such immigrants.

#### 4. Costs

*Fees.* USCIS fee collections associated with the religious worker program will increase substantially because of the new petitioning requirement for nonimmigrant religious workers and their relatives. As shown in B. above, the number of filings of Forms I-129 is expected to increase by about 14,000, resulting in an estimated \$4,480,000 in additional fee collections from this rule per year.

*Paperwork Burden.*

*Increased volume.* This rule will result in approximately 14,000 more Form I-129 filings than if this rule were not promulgated. This rule will result in no additional Form I-360, Form I-130, or Form I-539 filings. The approved public reporting burden for Form I-129 is estimated at 2 hours and 45 minutes,

including the time for reviewing instructions, completing and submitting the form. Therefore, this rule will result in an additional burden to prepare religious worker petitions of 38,500 hours for Form I-129. According to the United States Department of Labor Bureau of Labor Statistics estimates, employer costs for employee compensation averaged \$27.82 per hour worked in March 2007.<sup>11</sup> Valuing the effort expended per hour at that rate, this added time per form will cost the public \$1,176,647 in information collection costs as a result of requiring a petition from a nonimmigrant religious worker.

*Increased time.* This rule requires USCIS to revise the approved information collection packages for Form I-129, Petition for Nonimmigrant Worker, and Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant—OMB 1615-0009, and 0020, respectively. Petitioning organizations are required to submit proof of their tax-exempt status and an attestation regarding the potential religious worker's qualifications and duties. Organizations will have an additional burden in terms of time needed to complete the attestation and certification requirements. These requirements will increase the existing information collection burden by roughly 15 minutes per petition for the new attestation for both the Form I-129 and the Form I-360. For the projected 23,200 combined total of I-360 and I-129 filings to be submitted each year, this new attestation requirement results in 5,800 hours of additional paperwork burden. Valuing the effort expended per hour at \$27.82, this added time per form will cost the public \$161,356 in information collection costs.

*Legal and professional fees.* USCIS specifically requested public comment on the estimated cost to petitioning religious organizations and bona fide organizations affiliated with a religious denomination to comply with the new religious worker petition requirements. As a result, USCIS received some public comments on the costs incurred to hire legal counsel or another party to prepare religious worker petitions. For example, one commenting organization stated that it incurs a cost of \$1,500 per petition for either its internal staff or a hired professional to prepare its petitions. An Internet search quickly finds several law firms advertising religious worker program services. One

Web site, for example, advertises a fee of \$1,000 for preparing petitions for R-1 cases and an additional \$200 for the family (R-2s), \$1,500 for immigrant religious worker petitions and \$800 for the consular processing or adjustment of status applications in the United States. Additional family members are \$400 for a spouse and \$200 per child. USCIS regulations, including this rule, do not require petitioners to hire legal or professional help to complete religious worker petitions. Regulations, forms, and instructions are written in plain language intended for the public to read and follow. Thus, the only costs imposed by USCIS for the burden of application preparation are based on estimated completion times and are included in the increased volume costs calculated in the paperwork burden cost estimates above.

*IRS application fees.* USCIS recognizes that many religious organizations will not have a currently valid determination letter of their IRC section 501(c)(3), 26 U.S.C. 501(c)(3), status and may be required to pay a user fee to the IRS to acquire one.<sup>12</sup> Very small organizations with gross revenues of not more than \$10,000 may be charged a fee of \$300 by the IRS to determine their current IRC section 501(c)(3) status. Organizations with gross receipts in excess of \$10,000 during the previous four years or anticipating gross receipts averaging more than \$10,000 during the first four years, may be charged a fee of \$750 by the IRS to determine their current IRC section 501(c)(3) status. USCIS does not possess sufficient information to determine how many organizations that will be filing petitions with USCIS for religious workers will fall into each category or otherwise be required to pay such a fee. In addition, several organizations are expected to have lost or destroyed their tax-exempt under IRC section 501(c)(3) determination letter, requiring a fee of \$750 to obtain a new letter from the IRS. However, in such cases, the organization's incurrance of the fee for obtaining a replacement letter, while unfortunate, is attributable to the faulty record keeping of the organization, which caused the organization's letter to be lost, rather than to this rule.

#### 5. Qualitative Benefits

*Fraud Prevention.* Considering the importance of preventing fraud in the religious worker program and of

<sup>10</sup> Form I-539 has many uses. For purposes of this analysis, Form I-539 is used only in relation to religious workers.

<sup>11</sup> See Employer Costs for Employee Compensation, at [http://data.bls.gov/PDQ/servlet/SurveyOutputServlet;jsessionid=f03023a343e11\\$02\\$3F\\$](http://data.bls.gov/PDQ/servlet/SurveyOutputServlet;jsessionid=f03023a343e11$02$3F$).

<sup>12</sup> See United States Department of the Treasury, Internal Revenue Service, *Frequently Asked Questions about Form 1023*, at <http://www.irs.gov/charities/article/0,id=139504,00.html>.

ensuring that only legitimate religious organizations and bona fide affiliated organizations participate in the process, DHS believes that this proposed rule will have a positive impact overall. As stated in the proposed rule, USCIS found a high level of fraud in the religious worker program, petitions filed on behalf of religious workers by nonexistent organizations, and material misrepresentations in petitions. Recently, there have been several arrests associated with criminal activities and fraud in the religious worker program.<sup>13</sup> Decreased fraud and increased national security will ensure that the benefits of the religious worker visa program go to those who were intended to benefit and the eligible aliens maintain proper status during their stay in this country.

## 6. Summary and Conclusions

This rule will not significantly change the number of persons who immigrate to the United States based on employment-based petitions or temporarily visit based on a nonimmigrant visa petition. This rule is intended to benefit the public by clarifying definitions associated with the religious worker classifications, acceptable evidence, and specific religious worker qualification requirements. Balanced against the costs and the requirements to collect information, the burden imposed by the proposed rule appears to USCIS to be justified by the benefits.

This rule will result in approximately 14,000 more Form I-129 filings than if this rule were not promulgated. This rule will result in no additional Form I-539, I-360 or Form I-130 filings. The added time per form resulting from this rule will cost the public \$161,356 in information collection costs. The added volume of filings will cost the public \$1,176,647 in information collection costs as a result of requiring a petition from a nonimmigrant religious worker.

The cost of this rule's increased information collection is outweighed by the overall benefit to the public of an improved system for processing religious workers. The proposed rule is a vital tool in furthering the protection of the public by: (1) More clearly defining the requirements and process by which religious workers may gain admission to the United States and (2) increasing the ability of DHS to deter or detect fraudulent petitions and to investigate and refer matters for prosecution.

### F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the

relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### H. Paperwork Reduction Act

#### 1. USCIS Forms I-129 and I-360

Any prospective employer must file a Form I-129, Petition for Nonimmigrant Worker, or Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, seeking to classify an alien as a religious worker under sections 101(a)(15)(R) and (27)(C) of the Act. Individual aliens may also file Form I-360 on their own behalf. The Forms I-129 and I-360 are considered information collections under the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has previously approved both the Forms I-129 and I-360 for use. The OMB control numbers for these collections for the Form I-129 is OMB 1615-0009 and for the Form I-360 is OMB 1615-0020.

As discussed in the proposed rule, the number of respondents filing Form I-129 will increase. In addition, Forms I-129 and I-360 will be revised with respect to evidentiary attestations. Accordingly, these requirements are considered information collections subject to review by OMB under the Paperwork Reduction Act of 1995. DHS requested comments on the revision to the forms during a 60-day period until June 25, 2007. DHS did not receive any comments on the revision to these two forms. Accordingly, under the PRA, DHS is requesting comments during an additional 30-day period until December 26, 2008. When submitting comments on the information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of Information Collection for the Form I-129

(1) *Type of information collection:* Revision of currently approved collection.

(2) *Title of Form/Collection:* I-129, Petition for a Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. This form is necessary for an employer to petition for an alien to come to the U.S. temporarily to perform services or labor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond to the new requirements:* 364,048 respondents at 2.75 hours per response, and 18,500 respondents at 3 hours per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Total reporting burden hours is 1,056,632.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529; telephone 202-272-8377.

### Overview of Information Collection for Form I-360

(1) *Type of information collection:* Revision of currently approved collections.

(2) *Title of Form/Collection:* Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-360, U.S. Citizenship and Immigration Services.

<sup>13</sup> See, e.g., supra, note 2.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The Form I-360 may be used by several prospective classes of aliens who intend to establish their eligibility to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond to the new requirements:* 8,984 respondents at 2 hours per response, 5,000 respondents at 3 hours per response, and 4,700 respondents at 2.25 hours per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Total reporting burden hours is 43,543.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Chief, Regulatory Management Division, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529; telephone 202-272-8377.

## 2. U.S. Internal Revenue Service Form 1023

This rule defines “bona fide non-profit religious organization in the United States” as an organization possessing a currently valid determination letter from the IRS confirming such exemption. If a religious organization wishes to petition USCIS for a religious worker and it does not have such a letter from the IRS, this rule requires it to obtain one. The regulations at 8 CFR 204.5(m)(2) existing prior to this rule provided that a religious organization could document that it was bona fide either by showing it is “an organization exempt from taxation as described in IRC section 501(c)(3), 26 U.S.C. 501(c)(3), as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefore if it had applied for tax-exempt status.” In practice, for an organization to establish that it would be tax-exempt, USCIS required the same information to be submitted to it that the organization would have had to submit to the IRS on IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, and its schedules. Thus, by requiring the religious organization to provide a determination letter from the IRS, this rule does not change the paperwork burden from the previous regulations.

As stated above, a little over 3,000 religious entities are expected to

petition for religious workers each year. According to the supporting statement submitted to OMB under the Paperwork Reduction Act for Form 1023 and approved under OMB control number 1545-0056, the IRS expects to receive over 29,000 Forms 1023 per year, with each requiring an average of 101.68 hours to complete, plus supporting schedules which may require an additional 7 to 15 hours each, for a total of 3,138,550 hours of burden and 33,378 respondents. USCIS has determined that the burden approved under OMB control number 1545-0056 is sufficiently large to encompass any increase in applications for IRC section 501(c)(3), 26 U.S.C. 501(c)(3), status caused by this rule.

### List of Subjects

#### 8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

#### 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

#### 8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

### PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

■ 2. Section 204.5 is amended by revising paragraph (m) to read as follows:

#### § 204.5 Petitions for employment-based immigrants.

\* \* \* \* \*

(m) *Religious workers.* This paragraph governs classification of an alien as a special immigrant religious worker as defined in section 101(a)(27)(C) of the Act and under section 203(b)(4) of the Act. To be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

(1) For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

(2) 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.

(3) Be coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States.

(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. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

(i) The alien was still employed as a religious worker;

(ii) The break did not exceed two years; and

(iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

(5) *Definitions.* As used in paragraph (m) of this section, the term:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in 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 possessing a currently valid determination letter from the IRS confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in 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 possessing a currently valid



determination letter from the IRS confirming such exemption.

*Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

*Minister* means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

*Petition* means USCIS Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, a successor form, or other form as may be prescribed by USCIS, along with a supplement containing attestations required by this section, the fee specified in 8 CFR 103.7(b)(1), and supporting evidence filed as provided by this part.

*Religious denomination* means 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.

*Religious occupation* means an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.

(C) 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.

(D) 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.

*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 individuals practicing religious vocations include nuns, monks, and religious brothers and sisters.

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986 or subsequent amendments or equivalent sections of prior enactments of the Internal Revenue Code.

(6) *Filing requirements.* A petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer. After the date stated in section 101(a)(27)(C) of the Act, immigration or adjustment of status on the basis of this section is limited solely to ministers.

(7) *Attestation.* An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) The number of members of the prospective employer's organization;

(iii) 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. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;

(v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;

(vii) That the alien will be employed at least 35 hours per week;

(viii) The specific location(s) of the proposed employment;

(ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;

(x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;

(xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and

(xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

(8) *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS

establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

(9) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

(10) *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

(11) *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

(12) *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a

review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

\* \* \* \* \*

**PART 214—NONIMMIGRANT CLASSES**

■ 3. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

■ 4. Section 214.2 is amended by revising paragraph (r) to read as follows:

**§ 214.2 Special Requirements for admission, extension, and maintenance of status.**

\* \* \* \* \*

(r) *Religious workers.* This paragraph governs classification of an alien as a nonimmigrant religious worker (R-1).

(1) To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

(i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;

(ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);

(iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);

(iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

(2) An alien may work for more than one qualifying employer as long as each qualifying employer submits a petition plus all additional required documentation as prescribed by USCIS regulations.

(3) *Definitions.* As used in this section, the term:

*Bona fide non-profit religious organization in the United States* means a religious organization exempt from taxation as described in 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 possessing a currently valid determination letter from the Internal Revenue Service (IRS) confirming such exemption.

*Bona fide organization which is affiliated with the religious denomination* means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, and possessing a currently valid determination letter from the IRS confirming such exemption.

*Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

*Minister* means an individual who:

(A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;

(B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;

(C) Performs activities with a rational relationship to the religious calling of the minister; and

(D) Works solely as a minister in the United States which may include administrative duties incidental to the duties of a minister.

*Petition* means USCIS Form I-129, Petition for a Nonimmigrant Worker, a successor form, or any other form as may be prescribed by USCIS, along with a supplement containing attestations required by this section, the fee specified in 8 CFR 103.7(b)(1), and supporting evidence required by this part.

*Religious denomination* means 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.

*Religious occupation* means an occupation that meets all of the following requirements:

(A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination;

(B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination;

(C) The duties do not include positions which 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

(D) 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.

*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 vocations include nuns, monks, and religious brothers and sisters.

*Religious worker* means an individual engaged in and, according to the denomination's standards, qualified for a religious occupation or vocation, whether or not in a professional capacity, or as a minister.

*Tax-exempt organization* means an organization that has received a determination letter from the IRS establishing that it, or a group it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendments or equivalent

sections of prior enactments of the Internal Revenue Code.

(4) *Requirements for admission/change of status; time limits—(i) Principal applicant (R-1 nonimmigrant).* If otherwise admissible, an alien who meets the requirements of section 101(a)(15)(R) of the Act may be admitted as an R-1 alien or changed to R-1 status for an initial period of up to 30 months from date of initial admission. If visa-exempt, the alien must present original documentation of the petition approval.

(ii) *Spouse and children (R-2 status).* The spouse and unmarried children under the age of 21 of an R-1 alien may be accompanying or following to join the R-1 alien, subject to the following conditions:

(A) R-2 status is granted for the same period of time and subject to the same limits as the principal, regardless of the time such spouse and children may have spent in the United States in R-2 status;

(B) Neither the spouse nor children may accept employment while in the United States in R-2 status; and

(C) The primary purpose of the spouse or children coming to the United States must be to join or accompany the principal R-1 alien.

(5) *Extension of stay or readmission.* 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. A Petition for a Nonimmigrant Worker to request an extension of R-1 status must be filed by the employer with a supplement prescribed by USCIS containing attestations required by this section, the fee specified in 8 CFR 103.7(b)(1), and the supporting evidence, in accordance with the applicable form instructions.

(6) *Limitation on total stay.* An alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The limitations in this paragraph shall not apply to R-1 aliens 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. In addition, the limitations shall not apply to aliens who reside abroad and

regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

(7) *Jurisdiction and procedures for obtaining R-1 status.* An employer in the United States seeking to employ a religious worker, by initial petition or by change of status, shall file a petition in accordance with the applicable form instructions.

(8) *Attestation.* An authorized official of the prospective employer of an R-1 alien must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. The prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) That the alien has been a member of the denomination for at least two years and that the alien is otherwise qualified for the position offered;

(iii) The number of members of the prospective employer's organization;

(iv) 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. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(v) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;

(vi) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(vii) The title of the position offered to the alien and a detailed description of the alien's proposed daily duties;

(viii) Whether the alien will receive salaried or non-salaried compensation and the details of such compensation;

(ix) That the alien will be employed at least 20 hours per week;

(x) The specific location(s) of the proposed employment; and

(xi) That the alien will not be engaged in secular employment.

(9) *Evidence relating to the petitioning organization.* A petition shall include the following initial evidence relating to the petitioning organization:

(i) A currently valid determination letter from the IRS showing that the organization is a tax-exempt organization; or

(ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or

(iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3), or subsequent amendment or equivalent sections of prior enactments, of the Internal Revenue Code, as something other than a religious organization:

(A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;

(B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;

(C) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and

(D) A religious denomination certification. The religious organization must complete, sign and date a statement certifying that the petitioning organization is affiliated with the religious denomination. The statement must be submitted by the petitioner along with the petition.

(10) *Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:

(i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and

(ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological education is accredited by the denomination, or

(iii) For denominations that do not require a prescribed theological education, evidence of:

(A) The denomination's requirements for ordination to minister;

(B) The duties allowed to be performed by virtue of ordination;

(C) The denomination's levels of ordination, if any; and

(D) The alien's completion of the denomination's requirements for ordination.

(11) *Evidence relating to compensation.* Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case, the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

(ii) *Self support.* (A) If the alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien 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.

(B) An established program for temporary, uncompensated work is defined to be a missionary program in which:

(1) Foreign workers, whether compensated or uncompensated, have previously participated in R-1 status;

(2) Missionary workers are traditionally uncompensated;

(3) The organization provides formal training for missionaries; and

(4) Participation in such missionary work is an established element of religious development in that denomination.

(C) The petitioner must submit evidence demonstrating:

(1) That the organization has an established program for temporary, uncompensated missionary work;

(2) That the denomination maintains missionary programs both in the United States and abroad;

(3) The religious worker's acceptance into the missionary program;

(4) The religious duties and responsibilities associated with the traditionally uncompensated missionary work; and

(5) Copies of the alien's bank records, budgets documenting the sources of self-support (including personal or family savings, room and board with host families in the United States, donations from the denomination's churches), or other verifiable evidence acceptable to USCIS.

(12) *Evidence of previous R-1 employment.* Any request for an extension of stay as an R-1 must include initial evidence of the previous R-1 employment. If the beneficiary:

(i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of filed income tax returns, reflecting such work and compensation for the preceding two years.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available. If IRS documentation is unavailable, an explanation for the absence of IRS documentation must be provided, and the petitioner must provide verifiable evidence of all financial support, including stipends, room and board, or other support for the beneficiary by submitting a description of the location where the beneficiary lived, a lease to establish where the beneficiary lived, or other evidence acceptable to USCIS.

(iii) Received no salary but provided for his or her own support, and that of any dependents, the petitioner must show how support was maintained by submitting with the petition verifiable documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to USCIS.

(13) *Change or addition of employers.* 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).

(14) *Employer obligations.* When an R-1 alien is working less than the required number of hours or has been released from or has otherwise terminated employment before the expiration of a period of authorized R-1 stay, the R-1 alien's approved employer must notify DHS within 14 days using procedures set forth in the instructions to the petition or otherwise prescribed by USCIS on the USCIS Internet Web site at [www.uscis.gov](http://www.uscis.gov).

(15) *Nonimmigrant intent.* An alien classified under section 101(a)(15)(R) of the Act shall maintain an intention to depart the United States upon the expiration or termination of R-1 or R-2 status. However, a nonimmigrant petition, application for initial admission, change of status, or extension of stay in R classification may not be denied solely on the basis of a filed or an approved request for permanent labor certification or a filed or approved immigrant visa preference petition.

(16) *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, or satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

(17) *Denial and appeal of petition.* USCIS will provide written notification of the reasons for the denial under 8

CFR 103.3(a)(1). The petitioner may appeal the denial under 8 CFR 103.3.

(18) *Revocation of approved petitions—(i) Director discretion.* The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner ceases to exist or files a written withdrawal of the petition.

(iii) *Revocation on notice—(A) Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated terms and conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or

(5) The approval of the petition violated paragraph (r) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(19) *Appeal of a revocation of a petition.* A petition that has been revoked on notice in whole or in part may be appealed under 8 CFR 103.3. Automatic revocations may not be appealed.

\* \* \* \* \*

## PART 299—IMMIGRATION FORMS

■ 5. The authority citation for part 299 continues to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1103; 8 CFR part 2.

■ 6. Section 299.1 is amended in the table by revising the entries for Forms "I-129" and "I-360," to read as follows:

### § 299.1 Prescribed forms.

\* \* \* \* \*

Form No.	Edition date	Title and description
I-129	XX-XX-XX	Petition for a Nonimmigrant Worker.
I-360	XX-XX-XX	Petition for Amerasian, Widow(er) or Special Immigrant.

■ 7. Section 299.5 is amended in the table, by revising the entries for Forms “I-129” and “I-360,” to read as follows:

**§ 299.5 Display of control numbers.**

\* \* \* \* \*

Form No.	Form title	Currently assigned OMB control No.
I-129	Petition for a Nonimmigrant Worker	1615-0009
I-360	Petition for Amerasian, Widow(er) or Special Immigrant	1615-0020

**Michael Chertoff,**

*Secretary.*

[FR Doc. E8-28225 Filed 11-25-08; 8:45 am]

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