

9 FAM 41.58 NOTES

*(CT:VISA-1102; 11-06-2008)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.58 N1 INTRODUCTION

(CT:VISA-770; 09-28-2005)

- a. Section 209 of the Immigration Act of 1990, Public Law 101-649, created for the first time a separate nonimmigrant visa (NIV) classification at INA 101(a)(15)(R) specifically for religious workers. Many nonimmigrant religious workers had previously sought admission to the United States as visitors for business, temporary workers, or exchange visitors. (For the continuing alternate use of B-1 classification for certain religious workers, see 9 FAM 41.31 N9.1).
- b. The Immigration Act of 1990 also amended INA 101(a)(27)(C), the special immigrant category for ministers of religion, from which the standards for the R classification are derived. While the provisions of INA 101(a)(27)(C)(ii)(II) and (III) are in effect only until September 30, 2003 for special immigrant religious workers, they apply indefinitely to the R NIV classification.

9 FAM 41.58 N2 NO RESIDENCE ABROAD REQUIREMENT FOR R NONIMMIGRANTS

(CT:VISA-1077; 10-17-2008)

There is no requirement in the INA that applicants for R status establish that they have a residence in a foreign country which they have no intention of abandoning. The INA limits R nonimmigrants to a total period of stay not to exceed five years. The alien's stated intention to depart the United States when his or her status ends is normally sufficient to satisfy INA 101(a)(15)(R), absent specific indications or evidence that the alien's intent is to the contrary.

9 FAM 41.58 N3 REFUSALS UNDER INA 214(B)

(CT:VISA-1077; 10-17-2008)

An applicant for an R-1 visa cannot be refused under INA 214(b) on the ground that he or she lacks compelling ties. Nor is the intent to adjust status to immigrant sometime in the future a proper basis for an INA 214(b) refusal if the consular officer is satisfied that the applicant intends to comply with all the requirements for maintaining R status. Refusal under INA 214(b) is appropriate, however, if the applicant fails to establish eligibility for R-1 classification.

9 FAM 41.58 N4 CONSULAR OFFICER RESPONSIBLE FOR ADJUDICATING R NONIMMIGRANT VISAS

(TL:VISA-323; 10-10-2001)

By not mandating a preliminary petition process for R nonimmigrants, Congress placed responsibility and authority with consular officers to determine whether the requirements of INA 101(a)(15)(R) are met for aliens seeking that classification and requiring visas. Consular officers shall process R visa applications in light of these regulations and notes, requesting advisory opinions from the Department when deemed necessary or required per 9 FAM 41.58 N15 below.

9 FAM 41.58 N5 CLASSIFICATION CRITERIA

(CT:VISA-1102; 11-06-2008)

The criteria for classification of an R religious worker are:

- (1) The alien is a member of a religious denomination having a bona fide nonprofit, religious organization in the United States (see 9 FAM 41.58 N6 below);
- (2) The religious denomination and its affiliate, if applicable, are exempt from taxation, or the religious denomination qualifies for tax-exempt status (see 9 FAM 41.58 N7 below);
- (3) The alien has been a member of the organization for two years immediately preceding admission (see 9 FAM 41.58 N8 below);
- (4) The alien is entering the United States solely to carry on the vocation of a minister of that denomination (see 9 FAM 41.58 N9 below);
- (5) At the request of the denomination, the alien is entering the United States to work in a religious vocation or occupation for that denomination (see 9 FAM 41.58 N10 below) or for an organization affiliated with the denomination (see 9 FAM 41.58 N12 below),

whether in a professional capacity or not;

- (6) The alien is the spouse or child of an R-1 nonimmigrant who is accompanying or following to join him or her (see 9 FAM 41.58 N16 below); and
- (7) The alien has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure, if he or she has previously spent five years in this classification (see 9 FAM 41.58 N18 below).

9 FAM 41.58 N6 RELIGIOUS ORGANIZATIONS

(CT:VISA-1077; 10-17-2008)

- a. Consular officers must be satisfied that an R nonimmigrant is coming to work for a bona fide nonprofit, religious denomination in the United States. Such a denomination is one which:
 - (1) Possesses the elements of a religious denomination specified in 9 FAM 41.58 N6.1 below;
 - (2) Is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986; or
 - (3) If it has never sought tax exemption, establishes that it would be eligible for tax exemption if it had applied.
- b. Consular officers may request whatever documentation is required to determine whether a denomination qualifies under INA 101(a)(15)(R), including, if necessary, evidence of the organization's assets and methods of operation and/or the organization's papers of incorporation under applicable state law, in addition to the required proof of its tax-exempt status or eligibility (see 9 FAM 41.58 N14 below). Should doubt exist about the bona fides of a religious organization after consideration of all evidence presented, the consular officer should seek the Department's advisory opinion (AO) (see 9 FAM 41.58 N15 below).

9 FAM 41.58 N6.1 Characteristics of Religious Denomination

(TL:VISA-58; 04-30-1992)

A religious denomination will generally be found to have the following elements or comparable indications of its bona fides:

- (1) Some form of ecclesiastical government;
- (2) A recognized creed and form of worship;
- (3) A formal code of doctrine and discipline;

- (4) Religious services and ceremonies;
- (5) Established places of religious worship; and
- (6) Religious congregations.

9 FAM 41.58 N6.2 Internal Revenue Service (IRS) Requirements for Nonprofit Organization

(CT:VISA-770; 09-28-2005)

A bona fide nonprofit religious organization, as described in section 501(c)(3) of the Internal Revenue Code of 1986, must meet the following criteria:

- (1) No part of the net earnings of the denomination may benefit any private shareholder or individual;
- (2) No substantial part of the denomination's activities may involve carrying on propaganda or otherwise attempting to influence legislation; and
- (3) The denomination may not participate or intervene in any political campaign, including publishing or distributing statements, on behalf of (or in opposition to) any candidate for public office.

9 FAM 41.58 N7 TAX EXEMPT REQUIREMENT FOR RELIGIOUS DENOMINATIONS AND AFFILIATED ORGANIZATIONS

9 FAM 41.58 N7.1 Religious Denominations

(CT:VISA-1077; 10-17-2008)

While INA 101(a)(15)(R) does not specifically require a religious denomination to be exempt from taxation, both Department of Homeland Security (DHS) and Department of State regulations mandate that the denomination qualify for tax exemption as a test of its nonprofit status. The denomination must either demonstrate that it has been granted tax-exempt status by the Internal Revenue Service (IRS) in accordance with section 501(c)(3) of the Internal Revenue Code of 1986, or, if it has never sought such exemption from taxation, that it would be eligible therefore if it had applied (see 9 FAM 41.58 N14.2 below).

9 FAM 41.58 N7.2 Affiliated Organizations

(CT:VISA-770; 09-28-2005)

In the case of affiliates, it must be clearly established that tax-exempt status has been accorded by the IRS. If tax exemption has not been obtained, regardless of the eligibility for such, the organization would not qualify for status under INA 101(a)(15)(R). (For a discussion of affiliated organizations, see 9 FAM 41.58 N12 below.)

9 FAM 41.58 N8 MEMBERSHIP

(CT:VISA-770; 09-28-2005)

The alien must establish that he or she has been a member of the qualifying organization for at least two years immediately preceding application for a visa or for admission. Unlike an applicant for a special immigrant visa (IV) as a religious worker, an applicant for R nonimmigrant classification needs only to have been a member of the organization for the required two-year period and needs not to have been engaging in qualifying ministerial, vocational, or occupational activities in addition to membership.

9 FAM 41.58 N9 MINISTERS OF RELIGION

(TL:VISA-323; 10-10-2001)

Only individuals authorized by a recognized employing entity to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion may be classified as ministers of religion. The term does not include lay preachers or other persons not authorized to perform such duties. In all cases, there must be a reasonable connection between the activities performed and the religious calling of a minister. Evidence that a person qualifies as a minister of religion is normally available in the form of official ecclesiastical recognition such as certificates of ordination, licenses, formal letters of conferral, etc.

9 FAM 41.58 N9.1 Ordination of Ministers

(TL:VISA-58; 04-30-1992)

Ordination of ministers chiefly involves the investment of the individual with ministerial or sacerdotal functions, or the conferral of holy orders upon the individual. If the religious denomination does not have formal ordination procedures, other evidence must be presented to show that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy.

9 FAM 41.58 N9.2 Deacon May Qualify

(TL:VISA-58; 04-30-1992)

A deacon of any recognized religious denomination may be considered to be a minister of religion when ordination or an equivalent form of authorization has taken place which distinguishes the clerics from the laity and which confers the powers of:

- (1) Leading a congregation and preaching;
- (2) Administering the sacraments (baptism, communion, etc.) or their equivalents; and
- (3) Giving benediction.

9 FAM 41.58 N9.3 Practitioners and Nurses of Christian Science Church

(TL:VISA-58; 04-30-1992)

Practitioners and nurses of the Christian Science Church (Church of Christ, Scientist) may properly be considered as ministers of religion. Readers and lecturers do not qualify as ministers, but could qualify as aliens seeking to work in a religious vocation or occupation. The Christian Science Church is a religious denomination with an organization in the United States.

9 FAM 41.58 N9.4 Salvation Army

(TL:VISA-58; 04-30-1992)

Commissioned officers of the Salvation Army are considered to be ministers of religion. The Salvation Army is a religious denomination having an organization in the United States within the meaning of INA 101(a)(15)(R).

9 FAM 41.58 N9.5 Buddhist Monks

(CT:VISA-770; 09-28-2005)

The ceremony conferring monkhood status in the Buddhist religion is generally recognized as the equivalent of ordination. Whether or not a Buddhist monk qualifies as a minister of religion pursuant to INA 101(a)(15)(R) depends upon the activities he is seeking to pursue in the United States. While a Buddhist monk is obligated by his religion to study Buddhist scriptures and to practice the teachings of Buddha, there is no requirement that he take an active role in the spiritual guidance of a congregation of his co-religionists. In order to qualify for R status, however, a Buddhist monk must both establish his own qualifications as a minister of religion and must demonstrate that he is seeking to enter the United States for the sole purpose of conducting religious worship and providing other traditional religious services.

9 FAM 41.58 N10 RELIGIOUS WORKERS

(CT:VISA-1077; 10-17-2008)

Both subparagraphs (II) and (III) of INA 101(a)(27)(C)(ii) involve workers engaging in a religious vocation or occupation. Under the former, the alien must be working in a professional capacity and in the latter, the applicant is not so restricted but must merely be working in a religious vocation or occupation. There is no perceived need for this distinction, as anyone who qualifies under subparagraph (II) will also qualify under subparagraph (III).

9 FAM 41.58 N10.1 Professional Religious Workers

(TL:VISA-58; 04-30-1992)

To qualify as a professional religious worker, an alien must be seeking to enter the United States to work in a religious vocation or occupation requiring a baccalaureate degree (or its foreign equivalent) and must be in possession of such a degree. Baccalaureate degree equivalency through experience is not permitted for religious workers.

9 FAM 41.58 N10.2 Religious Vocations or Occupations

9 FAM 41.58 N10.2-1 Religious Vocations

(CT:VISA-1077; 10-17-2008)

Religious vocation means a calling to religious life, evidenced by the demonstration of a lifelong commitment as practiced in the religious denomination, such as the taking of vows. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters. An alien who has taken vows or the equivalent and has made a lifelong commitment to a religion is presumed to be engaging in activities relating to a traditional religious function regardless of the nature of the activity. Persons with religious vocations may engage in any type of activity within their religious vocations, denomination, or its affiliate. The absolute exclusion of janitors, maintenance workers, clerk, etc. from the definition of "religious occupation" does not apply to religious vocations. For vocation-based R-1 applicants, the emphasis is therefore on what the applicant's status is within the religious organization, rather than on what the applicant will do in the United States.

9 FAM 41.58 N10.2-2 Religious Occupations

(CT:VISA-1077; 10-17-2008)

Religious occupation means a habitual engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors or counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, persons involved solely in the solicitation of donations, or similar occupations. For occupation-based R-1 applicants, the emphasis is thus on what the applicant will do in the United States, rather than on what the applicant's status is. It is not necessary that the applicant be engaged in a religious occupation at the time of visa application and the applicant need not have prior experience. However, what is relevant is whether the alien truly intends to take up the described religious occupation.

9 FAM 41.58 N10.2-3 Training

(TL:VISA-323; 10-10-2001)

Training does not constitute work and therefore does not qualify as a religious occupation. If training is involved, consular officers should examine the case to determine whether the alien is coming to the United States for training or to perform in a religious occupation. However, an alien who has a religious vocation (as described in 9 FAM 41.58 N10.2-1) may qualify for R-1 status even if they are engaged in training.

9 FAM 41.58 N10.3 Activity of Lay-Persons Must Relate to Traditional Religious Function

(CT:VISA-1077; 10-17-2008)

The activity of a lay-person who will be engaged in a religious occupation must relate to a traditional religious function. The very nature of such activity must, therefore, embody the tenets of the particular religion and have religious significance; i.e., the performance of the activity constitutes "practice" of that religion. Consequently, working within a religious facility does not, in itself, qualify a lay-person for R classification. The alien must further establish that his or her prospective activity relates primarily, if not exclusively, to matters of the spirit as they apply to his or her religion. Any question which cannot be resolved by a consular officer as to whether an alien will be engaged in a traditional religious function should be submitted to the Department for an advisory opinion (AO) (see 9 FAM 41.58 N15 below).

9 FAM 41.58 N11 B VISAS FOR RELIGIOUS ACTIVITY

(CT:VISA-770; 09-28-2005)

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

9 FAM 41.58 N12 AFFILIATED ORGANIZATIONS

(CT:VISA-1077; 10-17-2008)

An affiliated organization must be closely associated with the religious denomination and hold tax-exempt status. Consular officers shall determine whether a bona fide affiliation exists on a case-by-case basis, reviewing the evidence presented. Any doubts regarding the bona fides of a claimed affiliation must be submitted to the Department for an advisory opinion (AO) (see 9 FAM 41.58 N15 below).

9 FAM 41.58 N13 REMUNERATING RELIGIOUS WORKERS

9 FAM 41.58 N13.1 Compensated Workers

(TL:VISA-58; 04-30-1992)

To lessen the possibility that a religious worker will seek supplemental employment while in the United States, particularly when employed by a smaller religious organization, consular officers should assess the organization's ability to adequately compensate the worker. If deemed necessary, evidence of the organization's financial situation may be requested, which might include the following:

- (1) Bank letters;
- (2) Recent audits;

- (3) The organization's membership figures; and/or
- (4) The number of employees currently receiving compensation, etc.

9 FAM 41.58 N13.2 Uncompensated Volunteers

(TL:VISA-58; 04-30-1992)

An alien who seeks to enter the United States to engage as an uncompensated volunteer in a religious occupation or vocation must demonstrate sufficient financial resources to satisfy the consular officer that he or she will not become a public charge nor resort to unauthorized employment.

9 FAM 41.58 N14 EVIDENCE FORMING BASIS FOR R CLASSIFICATION

(CT:VISA-770; 09-28-2005)

An alien seeking classification as a religious worker makes application directly to a consular officer, or, if visa exempt, to an immigration officer at a U.S. port of entry (POE). No petition, labor certification, or prior approval is required. The alien shall present evidence which establishes to the satisfaction of the consular or immigration officer that he or she will be providing services to a bona fide nonprofit, religious organization or its affiliate, and that he or she meets the criteria to perform such services. The evidence to be presented shall consist of the documentation specified below.

9 FAM 41.58 N14.1 Petitions and Notices of Approval

(CT:VISA-1077; 10-17-2008)

No petition, labor certification, or other prior approval is required in R-1 cases. Congress has charged the consular officer with the responsibility and authority to determine whether aliens meet the qualifications for R visa issuance. However, aliens in the United States who seek to extend R-1 status or to change status to R-1 are required by DHS to have a Form I-129, Petition for a Nonimmigrant Worker, filed on their behalf, and they receive a Form I-797, Notice of Action, when the extension or change of status is approved. If the alien goes abroad to obtain a visa, he or she may present the Form I-797. The Form I-797 for a R-1 relates to the prior change of status or extension of stay. The consular officer must adjudicate the visa application de novo on its own merits. While the DHS petition approval is not binding, it should be given some consideration, particularly if the applicant's duties have remained unchanged since the change of status or

extension of stay. If the applicant meets the criteria for classification as an R-1, the consular officer can issue an R-1 visa, whether DHS previously approved a Form I-129 or not. However, if the alien does not meet the criteria for R-1 classification, the consular officer must refuse the application even if the DHS had previously approved an R-1 petition.

9 FAM 41.58 N14.2 Evidence of Tax Exemption or Eligibility for Tax-exempt Status

(TL:VISA-323; 10-10-2001)

The alien shall present evidence that the religious denomination, or its affiliate, qualifies as a nonprofit religious organization in the form of:

- (1) A certificate of tax-exempt status issued by the Internal Revenue Service (IRS); or
- (2) In the case of a religious denomination which has never sought tax-exempt status, documentation demonstrating that the organization would qualify for tax exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (see 9 FAM 41.58 N6.2 above) if such status were sought. In all cases involving claimed eligibility for tax exemption, the consular officer must forward all pertinent documentation, along with an evaluation of the evidence presented, to the Department for an advisory opinion (see 9 FAM 41.58 N15 below).

9 FAM 41.58 N14.3 Certification from Employing Religious Organization

(CT:VISA-1077; 10-17-2008)

An authorized official of the specific organizational unit of the religious denomination or affiliate which will be employing or engaging the alien in the United States must prepare a letter certifying the following:

- (1) That, if the alien's religious membership was maintained, in whole or in part, outside the United States, the foreign and United States religious organizations belong to the same religious denomination;
- (2) That, immediately prior to the application for the nonimmigrant visa (NIV) or application for admission to the United States, the alien has been a member of the religious organization for the required two-year period;
- (3) That (as appropriate):
 - (a) If the alien is a minister, he or she is authorized to conduct religious worship for that denomination and to perform other

duties usually performed by authorized members of the clergy of that denomination. The duties to be performed should be described in detail;

- (b) If the alien is a religious professional, he or she has at least a United States baccalaureate degree or its foreign equivalent, and such a degree is required for entry into the religious profession; or
 - (c) If the alien is to work in a nonprofessional religious vocation or occupation, he or she is qualified in that vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a monk, nun, or religious brother or sister, or that the type of work to be done relates to a traditional religious function;
- (4) The arrangements made for remuneration for services to be rendered by the alien, if any, including the amount and source of any salary, a description of any other types of compensation to be received (including housing, food, clothing, and any other benefits to which a monetary value may be affixed), and a statement whether such remuneration shall be in exchange for services rendered;
 - (5) The name and location of the specific organizational unit of the religious denomination or affiliate for which the alien will be providing services within the United States; and
 - (6) If the alien is to work for a bona fide organization which is affiliated with a religious denomination, a description of the nature of the relationship between the affiliate and the religious denomination.

9 FAM 41.58 N14.4 Other Evidence Necessary to Establish Bona Fides

(TL:VISA-58; 04-30-1992)

A consular officer may request any appropriate additional evidence which is necessary to verify the qualifications of the religious denomination, the alien, or the affiliated organization.

9 FAM 41.58 N15 ADVISORY OPINION REQUIREMENT

(TL:VISA-58; 04-30-1992)

- a. After reviewing the evidence, a consular officer who has any unresolved questions regarding the nature of the position to be occupied or the

qualifications of the alien, the religious denomination, or its affiliate must submit a request for an advisory opinion to the Department:

“ATTN: CA/VO/L/A,

Subject: VISAS: ADVISORY OPINIONS: INA 101(a)(15)(R).”

Such requests should be accompanied by all pertinent documentation and the officer’s evaluation of the issue(s) which cannot be resolved at post.

- b. All cases in which a religious denomination has not sought tax-exempt status from the IRS, but claims eligibility for such status, must be fully documented and submitted for an advisory opinion.

9 FAM 41.58 N16 SPOUSE AND CHILDREN

9 FAM 41.58 N16.1 Derivative Classification

(TL:VISA-58; 04-30-1992)

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

9 FAM 41.58 N16.2 Employment in United States by R-2 Aliens Prohibited

(TL:VISA-58; 04-30-1992)

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

9 FAM 41.58 N17 VISA ISSUANCE

9 FAM 41.58 N17.1 Annotating R Visas

(CT:VISA-770; 09-28-2005)

Posts shall insert the name and location of the religious denomination or affiliate for which the alien will be providing services immediately below the lower margin of the visa. Posts should follow appropriate operating

instructions for annotating visas.

9 FAM 41.58 N17.2 Qualifying Documentation Available at Time of Admission

(CT:VISA-770; 09-28-2005)

R visa recipients should be advised to have all qualifying documentation available when applying for admission, in the event that it is requested by a DHS officer at the port of entry.

9 FAM 41.58 N18 READMISSION AFTER TOTAL ALLOWABLE PERIOD OF STAY HAS BEEN REACHED

(CT:VISA-1102; 11-06-2008)

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

9 FAM 41.58 N19 CHANGE OF EMPLOYERS

(CT:VISA-1102; 11-06-2008)

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