



<b>Employer Information Bulletin 18</b>  <b>Temporary Religious Workers (R-1)</b>  <b>December 8, 2004</b>	<b>EBISS: (800) 357-2099</b> <b>NCSC: (800) 375-5283</b> <b>TDD: (800) 767-1833</b> <b>Fax: (202) 272-1864</b> <b>Order Forms: (800) 870-3676</b> <b>Website: <a href="http://www.uscis.gov">www.uscis.gov</a></b>
--	---

The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

### **GENERAL**

The temporary religious worker classification is divided into three categories of religious workers:

1. Ministers of religion<sup>1</sup>
2. Professional workers in a religious vocation<sup>2</sup> or occupation<sup>3</sup>
3. Other workers in a religious occupation or non-professional vocation.<sup>4</sup>

### **ELIGIBILITY**

Any bona fide nonprofit religious organization in the US may file for a religious worker or an alien may request admission to the United States (US) as a temporary (nonimmigrant) religious worker. To qualify as a petitioner, a religious organization must be a nonprofit religious organization granted (or eligible for) tax exempt status. To qualify as an R-1 beneficiary, an alien must have been a member<sup>5</sup> of a religious denomination<sup>6</sup> having a bona fide nonprofit religious organization in the US for at least the two years immediately preceding the application.

### **STANDARDS**

A nonimmigrant religious worker may be admitted temporarily to the US for one of the following reasons:

1. Solely to carry on the vocation of a minister of the religious denomination;
2. To work for the religious organization at the request of the organization in a professional capacity; or
3. To work for the organization, or a bona fide organization which is affiliated with the religious denomination<sup>7</sup>, at the request of the organization in a religious vocation or occupation.

<sup>1</sup> This term refers to individuals duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. There must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include lay preacher not authorized to perform such duties.

<sup>2</sup> A religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples include but are not limited to monks, nuns, religious brothers and sisters.

<sup>3</sup> This term refers to activities in a religious occupation that relate to a traditional religious function for which the minimum of a US bachelor's degree or foreign equivalent is required.

<sup>4</sup> These may include but are not limited to liturgical workers, religious instructors, religious hospitals or health care facilities, missionaries, religious translators, religious broadcasters, accountants and teachers. The term would not cover janitors, maintenance workers, clerks, fundraisers, or persons involved solely in the solicitation of donations.

<sup>5</sup> The alien is not required to have engaged in ministerial, vocational or occupational activities during this period.

<sup>6</sup> Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia or a bona fide religious denomination. An interdenominational religious organization, of which the Salvation Army is a representative example, may qualify if tax-exempt.

<sup>7</sup> This refers to an organization that is both closely associated with the religious denomination and exempt from taxation under section 501(c)(3) of the IRS Code as it relates to religious organizations. A letter from an authorized official of the religious organization is typically required to explain how the affiliation exists. An example would be Catholic Charities, a bona fide religious organization affiliated with the Roman Catholic Church.

## **PROCEDURAL REQUIREMENTS**

### **Is the Form I-129 necessary?**

No. It is only necessary to file the Form I-129 if the individual is in the U.S. in a valid nonimmigrant status seeking a change of status to R or an extension of status.

### **Application for designation as an R-1 temporary religious worker, based on an offer of qualifying religious employment in the US, may be made in one of two ways:**

- If the individual is in the U.S. in a valid nonimmigrant status seeking a change of status to R or an extension of status, a Form I-129 must be filed by the prospective R employer, with the \$185 fee, at the Service Center with jurisdiction over the place of religious employment, or
- If the individual is outside the U.S., then the application can be made directly by the individual at the U.S. consulate nearest his/her place of residence that accepts this nonimmigrant visa application by filing the Nonimmigrant Visa Application (DS-156), or directly to the **U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services** officer at a U.S. port-of-entry in the case of visa exempt aliens from Canada.

**Note:** To expedite a Form I-129 for an R-1, a Request for Premium Processing can be filed (Form I-907) with the appropriate fee of \$1,000. Download Form I-907 and instructions at [www.uscis.gov](http://www.uscis.gov) or request for Employer Information Bulletin 20.

## **PERIOD OF ADMISSION AND EXTENSION OF STAY**

An initial period of stay for an approved R-1 alien and dependents will be approved for the requested period, not to exceed three years. An extension of stay, which must be requested on Form I-129 from an Service Center and include documentation from the religious organization confirming the R-1 alien's continuing eligibility, may be granted for an additional two years, not to exceed a total maximum stay of five years.

## **CHANGE OF R-1 EMPLOYMENT**

A different or additional organizational unit of the same religious denomination seeking to employ or engage the services of a temporary alien religious worker must file Form I-129 with the Service Center having jurisdiction over the location where the services will be performed. New R-1 employment may not commence prior to the **Department of Homeland Security, U.S. Citizenship and Immigration Services'** approval. Change of R-1 employment is not permitted after an R-1 alien has spent five years in the US in R-1 status until the alien has resided outside the US for at least one year<sup>8</sup>.

## **CHANGE OF STATUS TO R-1**

A qualifying religious employer may petition for approval to employ an alien who is already present in the US under another nonimmigrant classification in a qualifying religious position. Such alien must apply to the **Department of Homeland Security, U.S. Citizenship and Immigration Services** on Form I-129 for approval to change status to R-1. Decisions will be rendered separately, on Form I-797, on the two requests.

## **EMPLOYMENT AUTHORIZATION FOR R-1 RELIGIOUS WORKERS**

For employment eligibility verification purposes, the documentation that will be submitted by most R-1 nonimmigrants is the combination of an unexpired foreign passport and a Form I-94 Arrival-Departure Record indicating unexpired R-1 status.

**Note:** Canadian citizens, who are visa exempt, are not required to have unexpired foreign passports. For Form I-9 purposes, they will submit a List B document such as a Canadian driver's permit and the Form I-94 Arrival-Departure Record indicating unexpired R-1 status as the List C document.

## **DEPENDENTS OF R-1 RELIGIOUS WORKERS**

An R-1 worker's spouse and unmarried children under 21 are entitled to R-2 classification and the same duration of stay as the R-1 principal from whom they derive status. R-2 nonimmigrants may not accept employment in the US under that classification.

<sup>8</sup> Brief visits to the US for business or pleasure are permitted. After the one-year period outside the US, a new petition must be submitted to the **Department of Homeland Security, U.S. Citizenship and Immigration Services** or application made to a US consulate (or US port of entry if the alien is visa exempt).

## **PERMANENT RESIDENCE IN THE US BASED ON RELIGIOUS OCCUPATION OR EMPLOYMENT**

An alien, or any person on behalf of an alien, may file an I-360 visa petition as a special immigrant religious worker.

### **To qualify, the alien must:**

1. Have for at least the two years<sup>9</sup> immediately preceding filing of the petition has been a member of a religious denomination that has a bona fide nonprofit religious organization in the US
2. Be coming to the US solely for the purpose of:
  - Carrying on the vocation of a minister of that religious denomination.
  - Working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization, or
  - Working for a bona fide organization that is affiliated with the religious denomination and is tax exempt under IRS Code section 501©(3) as it relates to religious organizations.
3. Have been performing the vocation, professional work, or other work continuously, either abroad or in the US, for at least the two-year period immediately preceding filing of the petition.

**Note:** If an the I-360 petition is approved, the alien must either obtain an immigrant visa through a US consulate abroad or, if present in the US, submit a Form I-485 to the **Department of Homeland Security, U.S. Citizenship and Immigration Services** for adjustment of status from whatever temporary (nonimmigrant) classification under which the alien entered the US to permanent resident (immigrant). All religious workers other than ministers must obtain permanent resident status through immigration or adjustment of status on or before September 30, 2003.

### **I-129 Petition for Nonimmigrant Worker**

**Classification: R Temporary Religious Worker**

**R-1: A person who intends to work in the U.S. as a religious worker for a period of not more than five years.**

### **PURPOSE:**

File Form I-129 to request extension of stay for someone in the U.S. already in R-1 status, or to request a change of status to R-1 for someone in the U.S. under another nonimmigrant category. **DO NOT USE THE FORM I-129 TO REQUEST STATUS FOR SOMEONE OUTSIDE OF THE U.S.**

### **WHO FILES?**

The religious organization (petitioner) that wants to hire the alien must file the petition.

### **WHAT TO SEND:**

1. Two copies of the petition and supporting documentation.
2. Proof that alien beneficiary is in the U.S. and is in valid nonimmigrant status on day petition is filed.
3. Proof that the alien has been a member of the same denomination as the petitioner for at least two years before petition is filed.
4. Proof that the petitioner is tax exempt according to the Internal Revenue Service (IRS) tax code.
5. If alien's religious membership was outside the U.S., petitioner must send a letter stating that the foreign and U.S. religious organizations are under the same denomination.
6. A statement explaining the amount of salary, and any other applicable benefits such as housing, food, etc. that the alien will receive.

### **ADDITIONALLY:**

- If the alien is a **minister**, they must provide proof that they are authorized to conduct religious worship under the designated denomination, as well as other duties that are applicable. A detailed description of all duties must be included.
- If the alien is a **religious professional**, they must provide proof that they have at least an U.S. bachelor's degree or a foreign equivalent. The degree must be required for entry into the religious profession.
- If the alien is to work in **another religious vocation or occupation**, they must provide proof that they are qualified. This may include evidence establishing individual is a nun, monk or religious brother, or that they are qualified to work in a religious occupation, that is to perform work that is related to a traditional religious function.

<sup>9</sup> The two year requirement may be satisfied either in the US or abroad.