

June 25, 2007

Richard A. Sloan
Director
Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington, DC 20529

Re: DHS Docket No. USCIS-2005-0030, Special Immigrant and Nonimmigrant Religious Workers, 72 Fed. Reg. 20442 (April 25, 2007).

Dear Mr. Sloan:

The United States Conference of Catholic Bishops (USCCB) and the Catholic Legal Immigration Network (CLINIC) submit the following comments to the United States Citizenship and Immigration Services (USCIS) on the proposed rule that would substantially change the regulatory scheme involving the Religious Worker Visa Program (RWVP). USCCB's interest in the RWVP is long standing. It was part of the original coalition of religious organizations that sought its inclusion in the Immigration Act of 1990, amending the Immigration and Nationality Act, the basic statute governing immigration law in the United States (INA). USCCB has participated in every rulemaking process directly affecting the RWVP since it was enacted into law.¹ This interest lies in the role of legal policy advocacy that USCCB assumes on behalf of the Catholic Bishops and their respective dioceses that avail themselves of the RWVP throughout the country.² For its part, CLINIC, a USCCB subsidiary and legally distinct 501(c)(3) organization, has an interest in the RWVP as the nation's largest network of charitable, grassroots organizations providing legal services to meet the immigration needs identified by the Catholic Church in the United States. Through its affiliated diocesan immigration programs, CLINIC provides legal support and services for the immigration needs of the USCCB, religious orders and communities, dioceses and Catholic Charities' organizations, including indigent and low-income immigrants.³

¹ Comments were filed on August 5, 1991, pursuant to 56 Fed. Reg. 30703 (July 5, 1991)(INS No. 1434-91); June 27, 1994, pursuant to 59 Fed. Reg. 27228 (May 26, 1994)(INS No. 1436-94); 60 Fed. Reg. 29771(July 7, 1995)(INS No. 1633-93; and 67 Fed. Reg. 49561 (July 31, 2002)(INS. No. 2104-00). USCCB participated actively in comments to the instant proposed rule prepared by the American Immigration Lawyers Association (AILA), and certain sections of these comments appear both in USCCB/CLINIC and AILA's comments. USCCB/CLINIC generally support AILA's comments.

² A diocese is the territorial jurisdiction of a bishop. Under Catholic Church law, canon law, each bishop is under the direct authority of the Pope.

³ CLINIC's current caseload includes approximately 950 arch/diocesan and religious institute clients.

Religious Freedom Restoration Act

The preamble to the proposed rule requests comments on the applicability of the Religious Freedom Restoration Act of 1993 (RFRA). 107 Stat. 1488, as amended, 42 U.S.C. § 2000bb *et. seq.* Under RFRA, the Federal Government may not, as a statutory matter, substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability. The only exception to this general mandate under the statute requires the Government to satisfy the compelling interest test to demonstrate that application of the burden is (1) in furtherance of a compelling government interest, and (2) the least restrictive means of furthering that compelling governmental interest.

A unanimous Supreme Court recently had the occasion to analyze the RFRA statute in *Gonzales v. O Centra Espirito Beneficiente Uniao Do Vegetal* (UDV). Accordingly, a review of UDV offers the opportunity to discern the mechanics of RFRA, and its potential applicability to the proposed rule. RFRA was enacted into law because Congress recognized that laws seemingly neutral toward religion may nonetheless burden religious exercise in the same manner as laws purposefully intended to interfere with religious exercise. RFRA applies to all federal laws unless specifically excluded and in the absence of any specific exception, it applies here. In UDV, the Court found that Congress established the compelling interest test as a means for the courts to strike a sensible balance between religious liberty and competing governmental interests. In UDV, the Court stated that religious exceptions to generally applicable rules must be evaluated not against a general interest in law enforcement but, based on the facts of a specific case, on how the government's compelling interests require denying the exemption. After UDV it is clear that RFRA mandates consideration of exceptions to a generally applicable law under the compelling interest test.⁴ While RFRA may require exceptions to generally applicable laws, the burden is on the government to demonstrate compelling interest, and it is up to the federal judiciary to strike the proper balance between the requested exception and the Government's interest.

USCIS has made it clear that the Government's interest is to eradicate fraud in the RWVP. To achieve this goal, USCIS has issued the proposed rule which may be considered a rule of general applicability. Since RFRA relates to requests for exceptions to a rule of general applicability, and it is not clear at this time what sorts of requests for exceptions from USCIS will be forthcoming, it is premature to comment on how it might apply to the proposed rule. Clearly, there are certain aspects of the proposed rule that might trigger RFRA consideration. For example, the proposed rule defines religious vocation as a "formal lifetime commitment to a religious way of life." 8 C.F.R. section 204.5(m)(4). In many Catholic religious orders or congregations, a person goes through various stages, from postulancy to the novitiate to renewable or temporary vows, until professing final vows. The fact that a vow is renewable or temporary does not negate the commitment that the individual has made to the religious calling.

⁴ In UDV the Supreme Court decided that the Government had failed to show it had a compelling interest in barring members of a small religious denomination from using so-called "hoasca tea" as needed to take part in the sacraments of their religion, though hoasca tea contained hallucinogens prohibited under Schedule 1 of the Controlled Substances Act.

Under the law of the Catholic Church, canon law, the novitiate is the formal entry into the religious congregation.⁵

If USCIS interprets “formal lifetime commitment to a religious way of life” as requiring “final vows” for the religious person to start accruing the two-year prior experience requirement for the purpose of qualifying for special immigrant status, RFRA may come into play.⁶ Under this scenario, a petitioning congregation could not sponsor a person in the novitiate for special immigrant status, even though this might pose a substantial burden on the free exercise of religion. If USCIS were to deny a request for an exception under these circumstances, the Federal Government would have to show that the application of the burden and the specific denial of *this* request is in furtherance of its compelling interest to eradicate fraud in the RWVP, prove that the interest was compelling, and show that the rule is the least restrictive means of furthering that compelling interest (emphasis added). In turn, a federal court would need to strike the proper balance between the requested exception and the Government’s interests under RFRA.

There are other instances in the proposed rule under which similar circumstances may arise. In the interest of moving on to other comments on the proposed rule, the point under RFRA is that it may very well come into play as the proposed rule is administered by USCIS, and that exceptions to the immigration rules might be sought to avoid burdening the free exercise of religion, and should be granted unless those burdens are demonstrably the least restrictive means of furthering compelling governmental interests.

New Definitions and Proposed Changes to Existing Definitions

Religious Occupation

The proposed rule would change the existing definition of religious occupation to the following: “*Religious occupation* means habitual employment in an occupation the duties of which primarily relate to a traditional religious function. Examples of occupations that can qualify as a religious occupation include liturgical workers, religious instructors, religious counselors, cantors, catechists, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons involved solely in the solicitation of donations.” 8 C.F.R. section 204.5(m)(4); 8 C.F.R. section 214.2(r)(2).

We are concerned about the change to the current regulation listing specific positions as “examples of individuals in religious occupations” and stating that religious occupations “are not limited to” the occupations on such list. The proposed rule states that the list of specific positions “can qualify” as religious occupations. Our concern is that by stating that the occupations on the list “can qualify” as religious occupations, the USCIS suggests that in some cases, these occupations may not qualify as religious occupations. This undermines the intent of

⁵ See note 8, *infra* and discussion in text of comments.

⁶ *In Re: Catholic Solitudes, Petitioner, Administrative Appeals Office, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security (File A97 634 008, April 7, 2004)*. Even if RFRA were not applicable, to the extent that USCIS is making individualized assessments of the relative merit of certain claims, the governing caselaw will require application of a compelling interest test under the Free Exercise Clause. *Employment Division v. Smith*, 494 U.S. 877, 884 (1990).

the list, which should be to give guidance to religious organizations regarding which types of positions they can fill with foreign religious workers. In addition, it should not be up to individual adjudicators to decide when a listed occupation does or does not qualify as a religious occupation and encourages arbitrary decisions and possibly improper distinctions among faiths. We suggest keeping the language that precedes the list as it is in the current regulation.⁷ The preamble analysis of the proposed rule at page 20446 specifies a laundry list of qualifying occupations using “include, but are not limited to” language. The proposed rule should reflect the same language as the analysis contained in the preamble.

In addition, we are concerned that in order for a position to be considered a “religious occupation,” the petitioner would be required to show that the occupation is “traditionally recognized as a compensated occupation within the denomination.” The proposed rule provides very limited and ambiguous guidance for establishing whether an occupation is compensated. Many “traditional religious” functions pre-date the modern “compensation” era, and in some faiths there may not be a designated religious official who can declare for the entire denomination which are compensated religious occupations. For many religious occupations, workers traditionally engage in full-time work, but do so voluntarily. The fact that there may not be a monetary remuneration makes it no less of a full-time commitment to a religious denomination. In fact, there are many Catholic volunteer organizations who recruit talented and very committed individuals to work on a full-time basis as volunteers for the Church. These individuals are compensated by stipend, room and board, or other support. Religious workers who take vows of poverty and whose common expenses are provided for by their respective religious communities will be unable to provide specific evidence of their remuneration. The RWVP must acknowledge the unique character of work performed in religious occupations and provide a realistic structure for religious organizations to petition for such workers. We recommend that this provision (which is included twice in the proposed definition) be deleted. A religious employer’s ability to meet the requirement that the duties be “primarily, directly, and substantively related to, and must clearly involve inculcating or carrying out the religious creed and/or beliefs of the denomination” should be sufficient proof that the occupation is religious without this additional evidentiary burden. Further, we are concerned about the statement that the religious occupation must be “salaried, or otherwise compensated by room and board, or other support that is reflected in an alien’s W-2, wage transmittal statements, or income tax returns.”

⁷ The existing rule reflects the legislative history of the statute, as does the State Department’s interpretation which was also made close in time to the passage of the statute into law. Jeffrey Gorsky, Chief of the Legislation and Regulations Division for the State Department’s Visa Office has recently written:

9 FAM 41.58 N10.2-2 gives some examples of work that can be considered relating 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.” (The reference to “workers in religious hospitals or religious health care facilities” is to workers engaged principally in religious duties, not to doctors or nurses principally performing secular health care functions.) 01 State 034277 adds: **“Whether the duties relate to traditional religious functions should be determined in the context of the particular religious organization. For example, while meat processing is normally a secular function, insuring that meat is processed consistent with kosher or halal rules could be considered a religious function”** (emphasis added). “Factors in Consular Processing of Nonimmigrant Religious Workers”, Jeffrey H. Gorsky *Immigration Options for Religious Workers* 17 (AILA 2005)].

Room and board is often considered parsonage under the tax law and is not reflected in a W-2 or other tax document.

Religious Vocation

An important starting point in any discussion of religious vocation should be in the context of the well established principle that a religious vocation is a *status or state* in life and not work, which could be said of a religious occupation (emphasis added).

As stated in the introduction to these comments in the context of RFRA's application, the proposed rule defines religious vocation as a "formal lifetime commitment to a religious way of life." USCIS states its intent to revise the definition of "religious vocation" to clarify that it refers to a formal lifetime commitment. Its purpose is to distinguish those whose lives are dedicated to religious practices and functions from secular members of the religion. If this is, indeed, the reason for adding the new language, the language of the current regulations should be sufficient, "*religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination... .*" Requiring that the commitment be formal and lifetime adds far more than is necessary to distinguish those who have experienced a calling to religious life from their secular brothers and sisters. Further, if USCIS interprets "formal lifetime commitment to a religious way of life" as requiring "final vows" for the religious person to start accruing the two-year prior experience requirement for the purpose of qualifying for special immigrant status, a petitioning congregation could not sponsor a person in the novitiate for special immigrant status, even though this might pose a substantial burden on the free exercise of religion. In addition, this interpretation would be a substantial burden on newly formed religious orders that are in the process of being approved by the appropriate ecclesiastical authorities. For Catholics, this authority is the Holy See located in Vatican City.

Under the body of law governing the Catholic Church, canon law, persons are considered to be pursuing a religious vocation once they make a public profession of the vows of poverty, chastity, and obedience. There is no distinction in canon law between temporary and permanent vows; all have the same obligation to live under the three evangelical counsels. An individual demonstrates commitment in a religious vocation by formally entering into a particular religious order, or equivalent entity. For some, membership in the religious order entails the taking of temporary vows, or the equivalent, during which time the individual engages in direct experience in those areas of chosen ministry according to the internal constitution or the rules of the particular religious order. The fact that the vow is renewable or temporary does not negate that the individual has made a commitment to the religious calling. The duties and responsibilities remain the same. Individuals under temporary vows are required to live out those vows in a similar manner as individuals under permanent vows.⁸

⁸ Can. 654, "By religious profession members make a public vow to observe the three evangelical counsels; Chapter IV, "The Obligations and Rights of Institutes and of Their Members," Code of Canon Law (1983). Again, based on canon law, upon admission to the novitiate, the individual becomes a member of the religious institute and demonstrates commitment to a religious way of life. In like manner, individuals who are admitted to a monastery, priory, or seminary demonstrate that they are choosing a style of living that is vastly different from that of secular members of their religious denomination. Their lives are hallmarked by times and periods of communal and personal prayer; life within a community and in a communal or group setting; a life that is lived chastely, poorly, and obediently; and regular, if not daily, reception of certain sacraments (Eucharist and Penance) of the Catholic Church.

This issue arose in a case from the Texas Service Center (TSC) which denied a special immigrant religious worker petition, in large part, because the applicant had not taken final vows in her particular religious community for the purpose of satisfying the 2-year experience requirement contained in the language of the INA. INA sections 101(a)(27)(ii)(III) and 203(b)(4). The Administrative Appeals Office (AAO) reversed the TSC and stated that the fact that a vow is renewable or temporary does not negate the commitment that the individual has made to a religious calling. The duties and responsibilities remain the same. *In Re: Catholic Solitudes, Petitioner, Administrative Appeals Office, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security (File A97 634 008, April 7, 2004).*⁹ The proposed rule would supersede the AAO's decision in the above case. It would also be against congressional intent. Legislative history indicates a far broader application of religious vocation than that enunciated by the TSC's decision and the proposed rule, "[r]eligious workers and those in a religious vocation may be admitted in the third category, which includes those who take vows, such as nuns and monks, and may include others who pursue vocations such as liturgical workers... ." ¹⁰ Persons pursuing religious vocations are not limited to those who take vows, much less permanent vows. This view is supported by certain members of Congress who wrote a letter to the AAO to this effect in the *Catholic Solitudes* case.¹¹

The term "religious practices and functions" in the regulation is potentially troublesome considering past administrative practice such as the recent boilerplate Requests For Evidence for special immigrant petitions which ignored the legal distinctions between religious occupations and religious vocations. On the one hand, a person engaged in a religious vocation for an organization whose religious mission is service to the sick and needy, is engaged in a religious practice and function within an organization with that particular mission. On the other hand, if the use of this language is an attempt to impose the requirements of a religious occupation on a religious vocation it is grossly in error and would produce a significant change in the law. A religious sister in an order dedicated to care of the sick and needy should not be subject to the test of whether her day-to-day activities meet the qualifications of traditional religious functions or other religious occupation requirements. In other words, if the term "religious practices and functions" refers to the broader sense of mission and purpose, it is understandable. If it refers to the narrower "what are your 9-to-5 job duties" it is a significant problem. For the R-1 nonimmigrant classification, what is the purpose of requiring a "detailed description of the alien's proposed daily duties," if it is not relevant to the adjudication of the status of a vocation? Fed. Reg. at 20455. It is also interesting to note that in the very same R-1 nonimmigrant classification provision, the proposed regulation requires the attestation to state that, "if the position is not a religious vocation, the alien will not be engaged in secular employment." It could be that this is desirable language, consistent with the law's current recognition that one

⁹ *Id.*

¹⁰ H.R. Rep. No. 723, 101st Cong., 2d. Sess. 1(1990).

¹¹ Letter from Lamar Smith, Chairman, Subcommittee on Courts, the Internet, and Intellectual Property and John N. Hostettler, Chairman, Subcommittee on Immigration, Border Security & Claims, House of Representatives (Mar. 17, 2004), at footnote 1 (the letter acknowledges that this administrative practice is not found in the regulation, and the proposed rule would codify the administrative practice; moreover, the footnote clearly indicates that the congressmen believe that the TSC's interpretation, and by extension the proposed rule, does not comport with legislative intent which is a far broader in scope).

with the status of a religious vocation may, consistent with the religious mission of its organization and a vocation, serve in “secular” employment.

Deacons

In addition, the proposed rule states that ministers of religion must be fully trained according to the denomination’s standards. 8 C.F.R. section 204.5(m)(4). USCCB seeks clarification whether Catholic deacons will be considered ministers under the proposed rule. In the Catholic Church, ordained lay permanent deacons are duly authorized to perform duties of a minister of religion except for the celebration of the Mass in which the Holy Eucharist is consecrated, and the power to absolve in the confessional.

Because ordained deacons are duly authorized to perform most ministerial religious services, we recommend that the final rule include deacons as eligible as religious. We are aware that this may not be the situation with other denomination; however, if the petitioning religious organization or church can provide sufficient documentation of the duly authorized nature of diaconate activities, USCIS should provide for this in the final rule.¹²

Seminary Formation

Not only do we object to the two-year full-time compensation requirement to qualify for special immigrant status especially as it applies to religious vocation as stated above, we also urge USCIS to extend the two-year experience requirement for special immigrant religious worker status based on religious vocation as applied to seminary formation while on the F visa classification. While in the seminary, seminarians carry on their religious vocation and engage in formation which includes performing religious and ministerial duties. Presently and under the proposed rule, USCIS considers seminarians to be F visa students and, therefore not engaged in full-time pursuit, on a full-time compensated basis, of their religious vocation immediately preceding the filing for such classification.

There are four aspects to formation while in the seminary: human, spiritual, academic, and pastoral. As the seminarian progresses in his formation, he participates in a variety of religious activities including pastoral ministry in schools, religious education programs, parishes and hospitals. Toward the end of his seminary studies, he is ordained a deacon. The diaconate is considered a clerical state by the Catholic Church and deacons are duly authorized to perform certain sacraments and to engage in specific ministerial duties. The fact that the seminarian has not graduated from the seminary or been ordained a priest does not diminish the fact that he carries on his religious vocation and engages in religious duties and active ministry during his formation. In our view, there is no question that seminarians are carrying on their religious vocation in a wide variety of religious duties while in formation. The Department of State acknowledges that carrying on ministerial duties while in the seminary is an acceptable activity for fulfilling the two-year requirement under religious vocation. In this instance, USCCB urges USCIS to follow the Foreign Affairs Manual. FAM VISAS 42.32(D)(1)N8. While we are cognizant of the Administrative Adjudications Office position that FAM is not binding on USCIS, it has recognized that it may be used as a guide. *Matter of [No Name]*, [No File Number], (NSC) (March 28, 2003).

¹² A deacon in the Catholic Church is authorized to perform all of the function that Protestant ministers perform.

Religious Workers Full Time Compensation

The proposed rule would require that all religious workers be admitted into the US as special immigrants solely on a compensated full time basis. 8 C.F.R. section 204.5(m)(1). The proposed rule would also require that the two-year work experience immediately before applying for special immigrant classification also be compensated on a full time basis. 8 C.F.R. section 204.5(m)(2). We believe that a two-year full-time, compensated work requirement would severely hamper the Catholic Church's ability to bring religious workers to the US. The regulations require full-time compensation for a religious worker for the two years immediately preceding the filing of the special immigrant petition. Full-time compensation is not defined in the proposed regulations. The level of compensation should not be a full-time salary. Often religious workers are engaged in religious duties on a full-time basis, but do so on a volunteer basis. The fact that the work is unpaid makes it no less of a full-time commitment. In fact, there are many Catholic volunteer organizations who recruit talented and very committed individuals to work on a full-time basis as volunteers with the Church. These individuals are compensated by stipend, room and board, or other support from family members.

Full-time compensation for those engaged in a religious occupation for two years preceding the filing of a special immigrant petition would preclude religious workers, who gain the two years' experience as an R-1 religious worker without salary, from being eligible for the special immigrant classification. The type of documentation required for a prospective special immigrant must be realistic, especially when considering documenting prior work experience in a foreign country. Often bona fide religious workers in a foreign country are not paid by check and may not be required to pay taxes in their home country.

Furthermore, special immigrants who have made a vow of poverty may not be able to provide specific evidence required by the proposed rule as evidence of support. Religious institutes do not pay members and do not usually record money spent per individual member. Stipends earned by the various members are placed into a common fund in their local community that is then used to cover common expenses and to provide for members' needs. Canon law and the individual constitutions of each religious institution require that the religious institution provide for the full support and maintenance of the individual member. The fact that the individual is a member of a religious institution should be sufficient evidence that the individual has been maintained and supported. There are no exceptions for these vocations in the proposed rule. The statutory language does not require compensation; rather the requirement is that the person have been carrying on such a vocation continuously for at least a two-year period. INA section 101(a)(27)(C)(iii).

The proposed rule also requires that an individual engaged in a religious occupation be salaried or otherwise compensated by stipend, room and board, or other support that is reflected in an alien's W-2, wage transmittal statements, or income tax returns. This evidentiary documentation is not always available to religious workers because stipends, room and board, and other support are not required to be filed with Internal Revenue Service (IRS).

Proposed Petitioning Requirements

Attestation

The proposed rule would amend the current Form I-360 to include an attestation in which an authorized official for the prospective employer would certify under penalty of perjury that the attestation is true.¹³ It is not clear how certain required information regarding the number of members of the employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years, the title of the position offered, the complete package of compensation being offered and a detailed description of the alien's proposed daily duties, and, that the alien will be employed at least 35 hours per week and that such services are needed on a full time basis, should be submitted through a supplementary attestation.

The background requirements in the attestation provisions regarding an employer's staff and employment history are unreasonably burdensome, irrelevant to the applicant's benefit claim, and not pertinent to the stated purposes of this proposed rule.¹⁴ Requesting religious organizations to provide the number and positions (with brief description) of all employees in the religious organization and the background of previously petitioned for religious workers would impose an unreasonable cost and time burden on prospective employers and would delay the processing of religious worker applications.

¹³ The employer must attest to the following: (i) the employer is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination and exempt from taxation under IRC 501(c)(3); (ii) to the number of members of the employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years; (iii) the title of the position offered, the complete package of compensation being offered and a detailed description of the alien's proposed daily duties; (iv) that the alien will be employed at least 35 hours per week and such services are needed on a full time basis; (v) the specific location(s) of the proposed employment; (vi) that the alien has worked as a compensated, full-time religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered; (vii) that the alien has been a member of the denomination for at least two years immediately preceding the filing of the application; (viii) that the alien will not be engaged in secular employment, and any compensation for religious work will be paid to the alien by the attesting employer; (ix) that the employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become a public charge, 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, and the petitioner will notify CIS of any changes to the alien's employment 8 CFR 204.5(m)(6)(ii); 8 CFR section 214.2 (r)(6)(ii).

¹⁴ "[T]he prospective employer must specifically attest to the following: The number of members of the prospective employer's organization, the number and positions (with brief descriptions) of employees in the prospective employer's organization, the number of aliens holding R visa status currently employed or employed within the past five years by the prospective employer's organization, and the number of special immigrant religious worker and R visa petitions and applications filed by or on behalf of any aliens to be employed as ministers or religious workers for the prospective employer in the past five years... "

The attestation described above establishes a more firm distinction between the petitioning organization and the “employer” than existing regulations. The two are not identical. For some dioceses or religious orders, the diocese or religious order acts as the petitioner or employer, whereas the individual parishes or convents supply the individualized documentation relating how the beneficiary will be paid, exact job duties, and information relating to other religious workers who have been sponsored. This assures that Catholic organizations, leaders, or their designees know, approve, and monitor what is happening. It also ensures clear lines of authority, decision making, communication and accountability. The attestation requirements of the proposed rule would seriously impact this structure if the attesting petitioning entity, or employer must be the one who compensates the religious worker.

In light of this distinction, we seek clarification from USCIS as to the following: (1) who is the employer (presumably the site where the services will be performed under the example provided above); (2) is it the “employer” who will make the attestation for both the immigrant and nonimmigrant religious workers; and (3) does a change in parish or assignment to a convent, again using the cited example, mandate a new petition in the case of the R visa classification? When the diocese sponsors priests, or a religious order sponsors one of its members, the current practice is to notify USCIS when there has been a change in parish or ministry assignment. This is an important issue because, for example, under current practice and canon law, priests cannot minister in dioceses unless they obtain letters of faculties from the bishop. Since this is a new requirement, many religious entities, including dioceses, have not gathered this information, and it may be difficult to obtain for larger entities such as archdioceses. We urge USCIS to delay the prospective date for such information so that religious entities have the opportunity to make the appropriate adjustments.

Some dioceses are fearful that sponsoring large number of religious workers, especially under the R nonimmigrant classification will prejudice future applications. For example, some dioceses will sponsor priests and have them in a probation period for a number of months to ascertain suitability for ministry in the US. If the priest does not perform adequately, he will be terminated, and sent back to the sending country. Accordingly, there will be a bona fide need to replace those priests by sponsoring new ones. Under these circumstances, we urge USCIS to review such a scenario without prejudice. The intent is not to produce an immigration mill, but to ensure that the chosen priests are suitable for ministry in the US.

Pursuant to the attestation requirement, individuals who have made a vow of poverty must also submit evidence of all financial support. Monies earned or received by religious order priests, brothers, or sisters are put into a common “pot.” Expenses for the local community are then paid from this common “pot.” Religious orders and communities do not pay room and board or stipends to members for living or pursuing their religious vocations. Religious order priests, brothers, and sisters will not have the required documents.

We urge the continued use of 8 C.F.R. section 204.5(g)(2) which allows employers of more than 100 employees to provide a statement from the organization’s finance director establishing the prospective employer’s ability to pay the proffered wage. This will obviate concern about whether an employer has the ability and intention to compensate a religious worker at a level at which she or he will not become a public charge.

On-site Inspections

The proposed rule indicates that USCIS may conduct site inspections of petitioning organizations. The inspections are aimed to deter and detect fraud, and allow USCIS to monitor religious workers to make sure that they maintain lawful status while in the country. Based on the current administrative practice of on-site compliance reviews, we are very concerned that the on-site visits have significantly slowed down the adjudication process. This is the current reality. Several religious communities have expressed concerns regarding the proposed on-site inspections and whether pending applications will be unreasonably delayed. The proposed rule would authorize the USCIS to have discretionary authority to conduct pre-approval on-site inspections; however, it does not provide a timeframe or guidance for such inspections. The result could be that the USCIS adjudicator could unreasonably delay an application, pending an on-site inspection, without the prospective employer or beneficiary having any sense of when the inspection or adjudication of the petition may occur. The harmful consequence would be that many legitimate religious workers would have their applications stalled, creating significant problems for religious members; for example, religious workers who must temporarily travel outside the United States as part of their religious obligations. The current implementation of on-site inspections has already caused profound delays in the current adjudication of petitions and applications and will no doubt continue into the future.

Another problem with on-site compliance reviews concern lack of uniform notice to attorneys who represent churches and religious organizations and who have filed Form G-28's, Notice of Entry of Appearance as Attorney or Representative, with USCIS. We urge USCIS to implement a system of adequate and uniform notice to these attorneys. Proper case representation is the obligation to assist the client when interacting with immigration authorities.

Also, there are no standards for the review and no results are offered to a religious organization that has just completed an inspection. After an on-site visit, organizations do not receive any information on the results of the visit. No final report or information is issued to the organization to show if they are qualified as a bona fide non-profit religious organization under the immigration regulations. We strongly recommend that some final result/report be issued to the organization after an on-site visit that notifies it that it is an eligible organization. A further problem with the on-site reviews is that there is no mechanism to challenge negative findings. Exacerbating the inability to challenge the findings is the fact that such findings become part of the administrative record. If a case is challenged in federal court, the judiciary would accept the negative findings as part of the administrative record.

There are also concerns with USCIS consideration of engaging contractors to perform these inspections: Will they adhere to the focus of the inspection? Who will train them? How will they be trained? Who will supervise them? How will they be supervised? How will employers be able to express concern about the individual or the way the individual conducts the inspection? We strongly recommend that on-site inspectors be government employees and not contract workers.

In addition, many practitioners report that clients in the R classification who have filed I-360 petitions and are waiting for the on-site visits will soon be nearing their 5-year limit. Even if they were to rely on INA section 245(k), which ought to be an unusual remedy, they cannot consider filing for adjustment of status until the I-360 petition is approved. This is an untenable situation for the petitioning entities that are looking for an orderly and legal manner to maintain their needed religious workers. We also believe that the problem could be corrected quite easily through methods already in existence in other provisions of the immigration law.

Finally, the description of what may be covered during an on-site inspection is overly broad and has the potential for an inspection to become a “fishing expedition”; thereby, defeating its purpose and usefulness as stated in the proposed regulations.

Concurrent Filing

The problem described above could be corrected by allowing the concurrent filing of I-360 petitions with I-485 adjustment of status applications. Most other employment-based immigrant visa petitions can now be filed concurrently with the I-485 application. We see no policy reason why religious workers could not also benefit from this option.

As you know, an interim rule was published in the Federal Register on July 31, 2002, and allowed for the filing of Form I-140, Immigrant Petition for Alien Worker, concurrently with Form I-485, Application to Register Permanent Residence or to Adjust Status. The interim rule and final rule includes workers classified under section 203(b)(1)-(3) of INA, but excludes INA section 203(b)(4) as it relates to special immigrant religious workers. We also note that concurrent filing is allowed in the special immigrant category covering special juveniles. We wonder if excluding concurrent filing was an oversight on the part of the government, or responds to concerns expressed by some in the government about potential misuse or fraud of the RWVP. With regard to the latter possibility, we note that the proposed rule would go a long way toward ferreting out those cases involving fraud.

It is important to note that the total universe of the beneficiaries of the RWVP special immigrant categories is small, 10,000 per year; this includes all special immigrant categories, not just religious workers. It is not unreasonable to expect that USCIS can successfully investigate fraud while at the same time allowing bona fide religious organizations to participate fully in the RWVP. While the RWVP visa numbers are small in comparison to the other employment-based visa categories, the population that the special immigrant religious workers serve through the religious organizations and denominations which sponsor them is large. Without religious workers, state or local governments would be responsible for filling the gap and providing these critical social services to vulnerable populations. Concurrent filing of the I-485 and I-360 is important to the religious organizations that rely on the services of special immigrant religious workers. As stated, potential beneficiaries are finding it difficult to maintain lawful status pending adjudication of the I-360 form, especially those who are currently under the R-1 nonimmigrant status and are approaching the five-year statutory limit of authorized stay in the United States. Allowing for concurrent filing of these forms would extend benefits bestowed by the regulation on religious workers: besides not falling out of status, they would be able to file for employment authorization, and advanced parole. Many religious workers are members of

international orders and or congregations with presence in diverse countries and thus they need to travel abroad.

For these reasons, we ask that USCIS include concurrent filings of the I-360 and I-485 forms. Allowing for concurrent filing will advance the goals enunciated in the above mentioned rule on employment-based preference categories, mainly to improve efficiency in customer service and to reduce unnecessary delays. Concurrent filing will help bona fide religious workers by allowing them to maintain lawful status, help religious organizations to keep staff that is vitally important to fulfill their religious mission and serve large numbers of vulnerable individuals across the United states, decrease instances of fraud, save USCIS resources, and save money that the state and local governments would have to spend to help the needy in the absence of religious institutions providing these services. Concurrent filing of the I-485 and the I-360 would go a long way toward achieving this goal.

In a recent federal court case regarding adjustment of status, USCIS failed to file papers in opposition to a motion for summary judgment opposing USCIS's policy to accept concurrent filing of I-140 and I-485 forms, but not I-360 and I-485 forms. Because of this failure and in accord with Local Rule CR 7(b)(2), the Court may consider such a failure as an admission that the motion has merit. Therefore, the Court declared such a policy to violate the Equal Protection component of the Due Process Clause of the Fifth Amendment. We bring this case to your attention because it illustrates another reason for USCIS to accept concurrent filing of the I-360 and I-485 forms. *Hillcrest Baptist Church, Edward William Lehman; Alana Louise Lehman v. United States of America, U.S. Citizenship and Immigration Services; and Gregory W. Christian, Acting Director, U.S. CIS Nebraska Service Center.* No. C06-1042Z, U.S. Dist. Ct. Western Dist. of Washington, 2007 U.S. Dist. LEXIS 12782 (Feb. 23, 2007).

Evidentiary Requirements for Petitioning Organizations

Internal Revenue Code and Internal Revenue Service Requirements

The overwhelming majority of Catholic organizations, including dioceses, parishes, schools, hospitals, and affiliated charities are recognized as exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code under a single group tax exemption issued to the USCCB (USCCB Group Ruling). Because the IRS recognizes these Catholic organizations as exempt from taxation under the USCCB Group Ruling, it does not issue individual determination letters to each covered organization. Rather, IRS affirms the USCCB Group Ruling annually in a letter issued to the USCCB. That annual reaffirmation letter covers Catholic organizations listed in the current Official Catholic Directory edition issued to the USCCB. USCCB has recommended that Catholic organizations establish that they are exempt from taxation under section 501 (c)(3) by producing the following documentation: (1) a copy of the most recent USCCB Group Ruling reaffirmation letter issued by the IRS to the USCCB; and (2) a copy of the page from the current Official Catholic Directory on which the organization is listed.

In our experience, certain USCIS service centers have not properly understood group rulings issued by the IRS.¹⁵ We fear that the proposed rule would not change this situation. The

¹⁵ See, Group Exemptions, Tax Exempt and Government Entities Division, Publication 4573(12-2006)(explanation of IRS recognition of organizations as tax-exempt if they are affiliated with a central organization).

proposed rule suffers serious deficiencies as a result of the borrowing and application of IRC terms, concepts, and procedures without a full understanding of their meaning, nuance, and practical application in the IRC context. They fail to reflect accurately the functioning of the exemption determination and group ruling processes, and require of organizations tax-exemption and related documentation that will not be forthcoming. More specific comments are outlined below.

Evidence relating to the petitioning organization

Pursuant to the proposed rule, the petitioner must submit certain initial evidence relating to the petitioning organization. 8 C.F.R. section 204.5(m)(7); 8 C.F.R. section 214.2(r)(7). More specifically, the proposed rule would require a currently valid determination letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the IRC of 1986, as a religious organization. 8 C.F.R. section 204.5(m)(7)(i); 8 C.F.R. section 214.2(r)(7)(i). We understand that the intended application of this requirement relates to an organization having an IRS section 501(c)(3) exemption determination letter issued directly to it. Nonetheless, we find deficiencies with this approach including the fact that many determination letters (currently valid) were issued prior to the 1986 Code, and that IRS determination letters do not classify an organization as a “religious organization.” An IRS determination letter *may* classify an organization as a “church” under sections 509(a)(1) and 170(b)(1)(A)(i) (emphasis added); however, this classification as a “church” does not relate to the organization’s section 501(c)(3) status, but rather its classification as a public charity (as opposed to a private foundation). Under IRC, the terms “religious organization” and “church” are not co-terminus; “church” is a subset of “religious organization”; although all churches are religious organizations, all religious organizations are not churches.

IRS Issued Group Rulings

The proposed rule addresses the reality that the IRS issues group rulings to certain religious denominations, and that for religious organizations that are recognized as tax exempt under a group tax exemption, there is a requirement to show a currently valid determination letter from the IRS establishing that the group is an organization as described in section 509(a)(1) of the IRC of 1986 or subsequent amendment, and that the group’s tax exemption is in accordance with section 501(c)(3) of the IRC of 1986, as a religious organization. 8 C.F.R. section 204.5(m)(7)(ii); 8 C.F.R. section 214.2(r)(7)(ii). We believe that the intended application of this requirement relates to a central organization holding a section 501(c)(3) group tax exemption ruling (“group ruling”) and the section 501(c)(3) subordinates covered under that group ruling. Nonetheless, we find significant deficiencies with this requirement including the fact that many group ruling letters (currently valid) were issued prior to the 1986 Code, that group ruling letters are not reaffirmed annually, (the USCCB group ruling is the exception, not the rule), and that the group ruling letter does not establish that a group is an organization.

The typical section 501(c)(3) group ruling letter establishes that (a) the central organization (the organization that holds the group ruling) is exempt under section 501(c)(3), and (b) that the subordinates included in that group ruling are also exempt under section 501(c)(3); it does not classify the central organization or any subordinate covered under the group ruling as a “religious organization.” In addition, the typical section 501(c)(3) group ruling classifies the central organization and each subordinate as a public charity (as opposed to a private foundation)

under section 509(a); it does not identify the subsection of section 509(a) under which an organization is classified since subordinates are not likely to be classified under the same subsection – they may be described in sections 509(a)(1), (2) or (3); further, subordinates are not necessarily classified under the same subsection of section 509(a) as their central organization.

Although the central organization holding a section 501(c)(3) group ruling may be classified as a “church” under sections 509(a)(1) and 170(b)(1)(A)(i), each subordinate covered under that group ruling is not also classified as a “church;” further, classification as a “church” is not the same thing as classification as a “religious organization;” “church” is a subset of “religious organization;” although all churches are religious organizations, all religious organizations are not churches.

Bona Fide Organizations affiliated with the Religious Denomination

Further, the proposed rule has an evidentiary requirement for a bona fide organization which is affiliated with the religious denomination, if the organization was granted a section 501(c)(3) exemption as something other than a religious organization. 8 C.F.R. section 204.5(m)(7)(iii); 8 C.F.R. section 214.2(r)(7)(iii). We seek clarification as to the intended application of this requirement because, as written, it is unclear and confusing. This requirement appears intended to cover 501(c)(3) organizations that do not conduct religious activities, but that are affiliated with a religious denomination. This subsection is internally confusing; it appears to require an organization to meet subparts (A), (B), (C) and (D); subpart (E) is not an independent requirement, but rather modifies (D).

To the extent that IRS determination letters do not classify organizations exempt under section 501(c)(3) as religious or not religious but merely exempt, this subsection overlaps with subsection (i) above; these two subsections will need to be conformed in some manner. What is intended by “bona fide” organization? Qualification under section 501(c)(3) presupposes the existence of a legal entity. Why is this term introduced here? How does affiliation with a religious denomination differ from inclusion in a church group ruling? How is “religious denomination” different from “church” or the central organization that holds a church group ruling?

The first subsection here would require a currently valid determination letter from the IRS showing that the organization is exempt from taxation in accordance with section 501(c)(3) of the IRC of 1986, (not necessarily as a religious organization). 8 C.F.R. section 204.5(m)(7)(iii)(A); 8 C.F.R. section 214.2(r)(7)(iii)(A). As noted in subsection (i) above, IRS determination letters do not classify organizations as religious organizations or as other than religious organizations; rather they determine that the organization is exempt under section 501(c)(3), and many determination letters (currently valid) were issued prior to the 1986 Code.

The second subsection would require 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 purpose of the organization. 8 C.F.R. section 204.5(m)(7)(iii)(B); 8 C.F.R. section 214.2(r)(7)(iii)(B). This subsection is intended to cover organizations that have other than religious purposes; the “purposes clause” of the organizing instrument of a section 501(c)(3) organization will typically reflect boilerplate section 501(c)(3) language; to the extent that an

organizing document reflects the organization's non-religious purposes, *e.g.*, health care, how is the organization expected to establish, through its organizing document, that it has religious purposes?

The third subsection requests organizational literature, such as brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization. 8 C.F.R. section 204.5(m)(7)(iii)(C); 8 C.F.R. section 214.2(r)(7)(iii)(C). If this subsection is designed to cover an organization that has other than religious purposes, *e.g.*, healthcare, how are the organization's calendars, flyers and literature expected to establish its religious purposes and nature?

The fifth subsection would require a currently valid determination IRS letter evidencing that the attesting organization is exempt from taxation in accordance with section 501(c)(3) of the IRC of 1986, as a religious organization. 8 C.F.R. section 204.5(m)(7)(iii)(E); 8 C.F.R. section 214.2(r)(7)(iii)(E). This is not an independent criterion, but rather modifies (D) above and, therefore, should be included in (D) rather than stated separately. As noted above, many currently valid IRS determination letters were issued prior to the 1986 Code. Further, as noted above, an IRS determination letter does not classify organization as "religious organization."

We strongly exhort USCIS to withdraw the entire portion of the proposed rule related to the IRS and IRC evidentiary requirements until USCIS convenes a panel of experts from the IRS Exempt Organizations Section, representatives of churches or religious denominations with group rulings, and representatives of churches or religious denominations with no group ruling. As stated earlier, these proposed requirements suffer serious deficiencies as a result of the borrowing and application of IRC terms, concepts, and procedures without a full understanding of their meaning, nuance, and practical application in the IRC context. They fail to reflect accurately the functioning of the exemption determination and group ruling processes and require of organizations tax-exemption and related documentation that will not be forthcoming.

Changes Unique to the Special Immigrant Classification:

Full Time Compensation

This change would require that all three types of religious workers have been performing religious work on a "compensated" basis for two years preceding the filing of the petition. Workers in a religious vocation should be excluded from this requirement. 8 C.F.R. 204.5(m)(2). As stated above, a religious vocation is a *status or state* in life and not work (emphasis added). To require a prior religious work requirement for those in vocations would subsume religious vocations into religious occupation. This would be against the plain reading of the relevant statutory provisions and the intent of Congress.

Break in Continuity of Prior Religious Work

The proposed rule would permit breaks in the continuity of the required religious work during the two years immediately preceding the filing of the petition as long as 1) the religious worker remained employed on a compensated, full time basis; 2) the break did not exceed two years; and 3) the nature of the break was for further religious training or sabbatical that did not involve unauthorized work in the United States.

This is problematic, as a religious worker who engages in further religious training or sabbatical is typically not in full-time, compensated status during this time. We wonder whether section (i) is intentionally written this way, or whether USCIS meant to require the religious worker to have been employed as a compensated, full-time employee *prior to* the break in the continuity of the required religious work (emphasis added). We are also concerned that this could exclude religious workers who experience breaks in their employment because of maternity leave (which is often unpaid) or illness. We suggest including a provision that would allow USCIS to consider other factors such as these when determining if the religious worker truly abandoned his or her religious work, or whether for reasons beyond their control (such as maternity/paternity, illness, training, sabbatical, short period of unemployment between different religious jobs, or other temporary absence) they were absent from work for a period of fewer than six months and therefore did not break the continuity of their religious work. 8 C.F.R. section 204.5(m)(3).

Changes Unique to the Nonimmigrant Religious Worker Classification:

Initial Admission Period and Extensions

The proposed change regarding periods of admission would make the initial entry period 1 year, as opposed to the current 3 years. Extensions of 2 years may be requested. The proposed rule would also require that for each extension, a Form I-129, Petition for a Nonimmigrant Worker, along with the R classification supplement containing the attestation must be filed. 8 C.F.R. section 214.2(r)(4). In addition, the proposed rule would eliminate the jurisdiction of the Department of State for granting the R visa and initial admission through consular processing, by requiring that a petition for religious worker be filed with the USCIS prior to receiving a non-immigrant religious worker visa. 8 C.F.R. section 214.2(r)(5). A prospective employer would be required to always file a petition for religious workers, regardless of whether it is an initial application or extension. Under the current structure, there is no requirement that religious workers in a foreign country file a petition for non-immigrant visas. By requiring that every religious worker file a petition prior to receiving a non-immigrant visa abroad the proposed rule will create a delay in the admission of religious workers and lead to a burdensome case load for the USCIS adjudicators.

Dioceses and religious orders in the United States suffer from a severe lack of qualified personnel. U.S. seminaries and religious orders are having trouble filling their classes with domestic-born individuals. In addition, men and women religious are often assigned and re-assigned by their superiors without much notice to the US employer, leaving positions open that urgently need to be filled. Requiring the employing dioceses and religious orders to have an approved USCIS petition before an individual can apply for an R-1 nonimmigrant visa will be detrimental to the hiring process. This requirement will have a serious adverse impact on religious organizations, religious workers, and those they serve due to extremely slow USCIS adjudications, delays caused by on-site visits, and difficulties in obtaining appointments at the U.S. Consulates. For example, CLINIC represents several religious organizations that are holding positions open, waiting for individuals who had I-129 petitions filed on their behalf nine months ago or more. This lack of timely adjudication severely hinders the hiring process,

leaving dioceses and religious orders without sufficient personnel to staff parishes, schools, hospitals, nursing homes and other facilities.

For these reasons, we strongly object to that aspect of the proposed rule concerning a new application for the initial admission and renewals. The burden to submit a potential of three sets of applications with supporting documentation would take valuable time away from important religious activities. We also question the need for the time limits. It seems to us that once the initial application has been approved, especially after the on-site visits either before the application is adjudicated, or at any time thereafter, USCIS would be in the position to ascertain if the application is legitimate. We simply see no need for the proposed time limits. Instead, we strongly recommend that the final rule continue to allow for the current three-year admission period. The proposed time limits on admission severely limit the time needed by religious order priests, brothers, and sisters who serve on the leadership teams of religious institutes that are international and headquartered in the U.S. to perform their duties. These individuals need the flexibility of time offered by the three-year admission period to travel in and out of the U.S. and to remain here as they minister to their religious institutes and members. This limitation adversely impacts the team member and the entire order, leading to unnecessary worry about whether their immigration status is expiring and limiting their effectiveness and ministry.

As stated, based on current experience, there will be more anticipated delays in timely adjudication of the petition by USCIS. Both the religious organization and the religious worker will be left in limbo due to the delay in USCIS adjudications. Having to submit W-2s, employer wage statements, and tax return transcripts with each additional request for R-1 nonimmigrant status beyond the first year is overly burdensome; vowed religious workers will not have these documents.

Another reason that we object to the one-two-two year time frame is the cost. Under the current 3-year initial admission period with a 2-year extension, the cost for those applicants presently in the US is \$380.00, while the cost is \$290.00 if processed through a consulate.¹⁶ Under the proposed rule, the cost would rise to \$570.00 for applicants currently in the US.¹⁷ The cost will rise dramatically once a recently announced fee increase is implemented on July 31, 2007 for a total of \$960.00.¹⁸ If one factors in the current cost of premium processing (\$1,000.00), the overall costs associated with sponsoring a religious worker under the R

¹⁶ **Current System: R-1, Applicant Abroad:** NIV Application Fee - \$100; Visa Issuance Fee May Be Applicable, Nationals of certain countries are required to pay an issuance fee in order for the visa to be issued. The fees are based on reciprocity and reflect the fees charged by the applicant's government for a similar service to a U.S. citizen. **TOTAL COST:** @ \$100 for an initial 3-year period; **R-1, Applicant Present in the U.S. (Initial / Renewal):** Form I-129, Non-Immigrant Worker - \$190, Optional Form I-539, Family Derivatives - \$200; **TOTAL COST:** @ \$190 for an initial 3-year period or 2-year extension (maximum 5-years).

¹⁷ **R-1, Applicant Present in the U.S. (Initial / Renewal):** Form I-129, Non-Immigrant Worker - \$190; Optional Form I-539, Family Derivatives - \$200; **TOTAL COST:** @ \$190 for an initial 2-year period or 2-year extension (maximum 5-years). This would require that an applicant extend their status after 1-year and submit an application with additional fee, or \$570.

¹⁸ **R-1, Applicant Present in the U.S. (Initial / Renewal):** Form I-129, Non-Immigrant Worker - \$320; Optional Form I-539, Family Derivatives - \$300; **TOTAL COST:** @ \$320 for an initial 2-year period or 2-year extension (maximum 5-years). This would require that an applicant extend their status after 1-year and submit an application with additional fee, or \$960. See Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, CIS No. 2393-06, 72 Fed. Reg. 4887, 4891 (Feb.1, 2007).

classification could become prohibitive for many religious organizations to sponsor needed religious workers.

There is a real danger that with the combination of the 1-year initial admission period, and two 2-years extensions, coupled with the filing costs, USCIS will cripple the nonimmigrant classification under the RWVP. Surely, this consequence would do a huge disservice to the majority of bona fide religious organizations that rely on the RWVP, and an outcome that Congress did not intend when enacting the legislation.

In the alternative, we encourage USCIS to allow for an initial admission period of two-years with a three-year extension. Under this scenario, petitioning religious entities would also be in a better situation to plan for their future needs in an orderly and timely fashion. Again, USCIS has existing investigatory power to monitor a particular petitioner with on-site visits to verify the legitimacy of both the petitioner and beneficiary.

Premium Processing

On November 28, 2006, USCIS announced that R nonimmigrant applications would not be accepted for premium processing.¹⁹ The notice stated that USCIS would suspend such processing for a period of six months during which time it would determine whether these applications might be processed within 15 calendar days. If USCIS determines that this is not feasible, it may impose additional requirements for premium processing for the R nonimmigrant classification or remove the R nonimmigrant classification permanently from premium processing through notice publication in the Federal Register. While premium processing is not part of the proposed rule for which these comments are submitted to USCIS, we exhort USCIS to continue premium processing for the R nonimmigrant classification. Premium processing will guarantee that the petitioning religious entity will be able to avail itself of the needed services of the sponsored beneficiary by a certain date and at the same time bring added revenues to USCIS.

If premium processing for nonimmigrant religious workers' petitions continues to be suspended, there remains no way for a U.S. employer to expedite the process and fill open positions. The Catholic Church is already suffering acutely due to the lack of priests, nuns, and brothers in the United States. Imposing this additional constraint on hiring foreign-born individuals will only hinder the hiring process and increase the burden on those already serving the Church in the U.S.

Consular Processing

Currently nonimmigrants may apply for the R visa directly at a US consulate abroad; however, the proposed rule would not allow for consular processing because all applications for the R nonimmigrant classification must be approved by USCIS before a visa is sought abroad. 8 C.F.R. section 214.2(r)(5). We strongly object to this requirement. Given the uncertainty of timely adjudications under the present system, including the reality of on-site compliance reviews that make the adjudicatory time frame uncertain, to eliminate consular processing would

¹⁹ Public Notice, USCIS Announces Temporary Suspension of Premium Processing Service for Religious Workers (R-1) Nonimmigrant Visa Classification (Nov. 28, 2006).

create even greater uncertainty for the majority of legitimate churches and religious organizations to plan for their needs. We understand that others submitting comments have raised an *ultra vires* statutory objection to the elimination of the Department of State's authority to grant initial admission for the R-1 visa classification through consular processing. We urge USCIS to consider carefully those arguments as well.

Once again, dioceses and religious orders in the U.S. suffer from a severe lack of qualified personnel. U.S. seminaries and religious orders are having trouble filling their classes with American-born individuals. In addition, men and women religious are often assigned and re-assigned by their superiors without much notice to the U.S. employer, leaving positions open that urgently need to be filled. Requiring the employing dioceses and religious orders to have an approved USCIS petition before an individual can apply for an R-1 nonimmigrant classification will be detrimental to the hiring process.

This requirement will have an adverse impact on religious organizations, religious workers, and those they serve due to extremely slow USCIS adjudications, delays caused by on-site visits, and difficulties in obtaining appointments at the U.S. Consulates. CLINIC represents several religious organizations that are holding positions open, waiting for individuals who had I-129 petitions filed on their behalf nine months ago or more. This lack of timely adjudication severely hinders the hiring process, leaving dioceses and religious orders without sufficient personnel to staff parishes, schools, hospitals, nursing homes and other facilities.

The additional expense incurred in the new petition requirement, given USCIS's new fee schedule, visa application fees, and visa issuance fees will also cause a serious hardship for Catholic dioceses, religious orders, and the individuals themselves. For example, visas for religious workers from Mexico are only valid for one year at a time. An individual may have to have five visas during his/her period of stay in the R-1 nonimmigrant status. This means: five I-129 petition filing fees at \$320 each, five visa application fees at \$100 each, and five visa issuance fees at \$100 each. This results in total costs of \$2,600.

Nonimmigrant Intent

The proposed rule addresses the important issue of nonimmigrant intent under the RWVP. 8 C.F.R. section 214.2(r)(11). Under the proposed rule, the filing of a labor certification or preference petition would not be the basis for denying a change of status to the R classification or an extension of the R nonimmigrant classification based on nonimmigrant intent. We praise USCIS for recognizing that a religious worker under the R nonimmigrant classification may "legitimately come to the [US] for a temporary period...and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the [US]."

Conclusion

Both USCCB and CLINIC are aware that problems may exist with certain individuals and entities that have misused the RWVP in the past. We do not condone such practices. We applaud USCIS for its efforts to tighten certain aspects of the program to address those concerns. USCIS should not wear “fraud blinders” that would have the effect of making the RWVP too difficult to use by the majority of legitimate petitioning entities and sponsored beneficiaries that avail themselves of a small, but valuable immigration program vital to the religious activities of Catholic entities in the United States. As President Bush said, “by feeding the hungry, by healing the addicted, by loving and caring for refugees, [faith-based organizations] represent the true strength, the genuine strength of the United States of America.” Policies should be in place that help, not hinder, religious organizations wishing to sponsor and retain foreign religious workers who serve their communities.

Sincerely,



Carlos Ortiz Miranda
Associate General Counsel
USCCB



Donald Kerwin
Executive Director
CLINIC