



GUIDELINES FOR RECEIVING PASTORAL MINISTERS IN THE UNITED STATES

**CIVIL LAW CONSIDERATIONS –
IMMIGRATION LAW**

Please note that information provided in this chapter does not constitute legal advice. Dioceses, eparchies, seminaries, institutes of consecrated life, and societies of apostolic life should consult with legal counsel before developing local policies or applying information contained herein to individual cases.

CIVIL LAW CONSIDERATIONS – IMMIGRATION LAW

A. INTRODUCTION..... 2

B. RECEIVING RELIGIOUS WORKERS AND STUDENTS 3

C. TYPES OF VISAS 4

 1. SPECIAL IMMIGRANT AND R-1 NONIMMIGRANT CLASSIFICATIONS 4

 a. *Difference Between Special Immigrant and Nonimmigrant R Visas*..... 4

 b. *Religious Workers Covered* 6

 2. F STUDENT VISA 6

D. APPLICATION PROCEDURES 7

 1. SPECIAL IMMIGRANT VISAS 7

 a. *Documentary Requirements*..... 8

 2. NONIMMIGRANT R VISAS 9

 a. *Documentary Requirements*..... 9

 b. *Extensions of Stay, Recapture Policy, and Changes in Status*..... 11

 c. *Reporting Requirements*..... 11

 d. *Limitation of Stay, and Exception*..... 12

 e. *Spouses and Children* 12

 3. FOREIGN STUDENT VISAS 13

 a. *Application Procedures* 13

 b. *Documentary Requirements*..... 14

 c. *Employment Issues*..... 14

 i. *Conditions of On-Campus Employment*..... 14

 ii. *Conditions of Off-Campus Employment* 15

 iii. *Legal Requirements for Off-Campus Employment*..... 15

 iv. *Change in Status Following Degree Attainment* 16

E. CONSIDERATIONS AND POTENTIAL PROBLEMS 16

 1. RELIGIOUS OCCUPATION AND RELIGIOUS VOCATION 16

2. INSPECTIONS	17
3. PREMIUM PROCESSING.....	18
4. ATTESTATION: REQUIREMENTS AND LOGISTICAL CONSIDERATIONS	18
5. EXPERIENCE REQUIREMENT AND BREAK IN CONTINUITY FOR SPECIAL IMMIGRANTS 19	
6. COMPENSATION AND PRIOR EMPLOYMENT/REQUIRED DOCUMENTARY EVIDENCE	20
7. RELIGIOUS ORGANIZATIONS AFFILIATED WITH THE CATHOLIC CHURCH	20
8. PRECONCEIVED INTENT TO IMMIGRATE AND SEMINARIANS.....	21
9. CHANGE OF ADDRESS NOTIFICATION	22
10. UNLAWFUL PRESENCE	22
11. MOVING ABOUT WITHOUT PERMISSION	24
12. INCORRECT CLASSIFICATION AND ADMISSION.....	24
13. CLASSIFICATION AS EMPLOYEE VERSUS INDEPENDENT CONTRACTOR	25
F. FREQUENTLY ASKED QUESTIONS.....	26
G. USEFUL PUBLICATIONS, USCIS FORMS, AND RESOURCES	34
H. CHECKLIST.....	35

A. Introduction

This section will discuss special immigrant (“lawful permanent resident”) and nonimmigrant (“temporary stay”) visa classifications, immigration status for international international pastoral ministers pursuant to the Religious Worker Visa Program (“RWVP”), and seminarians. In this chapter the term “religious worker” will be used instead of international pastoral ministers because it is a term used under federal immigration law, which is civil in nature. This chapter will also consider application procedures, extensions and changes of immigration status, reporting requirements, as well as potential problems linked to these categories; the following chapter will consider finances.

Particular churches have brought religious workers and seminarians born outside the United States to this country for various reasons. A general need for religious workers in certain

areas generally a particular need for pastoral workers who speak the languages of recent immigrant populations and are familiar with their cultures have led dioceses and eparchies to host and sometime train religious workers in the United States.

The primary federal statute in the U.S. governing immigration affairs is the Immigration and Nationality Act (INA 1952 as amended). In 2008 a major regulatory overhaul of the RWVP took place. The US Citizenship and Immigration Services (CIS), Department of Homeland Security (DHS) adjudicates benefits. Within the United States, US Immigration and Customs Enforcement (ICE) of the DHS enforces immigration laws and regulations. Customs and Border Patrol (CBP) of DHS is responsible for border enforcement. The various Department of State (DOS) consular offices located throughout the world issue visas. The DOS Visa Office is responsible for adjudicating requests for particular visa classifications, while the DHS determines actual immigration status in the United States.

B. Receiving Religious Workers and Students

Religious workers on temporary assignments in the United States must qualify and submit an application for the R visa (described in C.2, “Nonimmigrant Visas,” below). Those seeking permanent residence must qualify and submit an initial petition and before applying for permanent residency. If the petitioner is abroad, the process takes place in consular offices with jurisdiction over the place of residence of the beneficiary. If the petitioner is in the United States, the process to acquire permanent residency may occur in this country. Seminarians must qualify for the F visa (explained in B.2. “F Student Visa,” below) applicable to foreign students.

US Embassies and Consulates are branches of the DOS located around the world. They process visa applications for those seeking admission into the United States. Each embassy or consulate has its own practices and so should be consulted accordingly.

Dioceses and eparchies are responsible for sponsoring a particular religious worker for temporary or permanent residency in the United States. They are sponsoring petitioners and must submit the appropriate application and supporting documentation to federal immigration authorities for a beneficiary to be granted the appropriate visa for admission into the United States. As of this edition of the *Guidelines*, all religious worker applications are filed at the California Service Center, which is part of CIS. Diocese and eparchies are also responsible for reporting the religious worker to federal immigration authorities under certain circumstances. Seminaries are responsible for the appropriate matriculation of foreign students and must comply with applicable rules governing foreign students while in the United States.

A change of status from one type of temporary visa to another may occur while in the United States, provided certain requirements are met. An adjustment of status from a temporary visa to permanent residency may occur while in the United States, provided the person qualifies and otherwise meets the legal requirements.

Work- and compensation-related immigration rules for those on the R visa and seminarians must be followed. Otherwise the religious worker violates the terms and conditions of admission. Mass stipends are considered compensation. A violation of status may subject the religious worker to removal from the country or ineligible for adjustment of status to permanent residency. It is worth noting that Mass stipends are considered compensation.

C. Types of Visas

1. Special Immigrant and R-1 Nonimmigrant Classifications

a. Difference Between Special Immigrant and Nonimmigrant R Visas

Foreign religious workers are classified as “special immigrants” when they are sponsored as lawful permanent residents of the United States under the RWVP. Special immigrant foreign

religious workers fall under three visa classifications: ministers, persons in a religious occupation, or persons in a religious vocation. It is noteworthy that to qualify for any one of these visa classifications, the religious worker must have been “a member of a religious denomination having a bona fide nonprofit, religious organization in the United States” for at least two years before the religious worker petitions for a visa. There is also a two-year work experience requirement in a particular religious vocation or religious occupation immediately preceding application for admission as a special immigrant religious worker. Regulations governing special immigrant religious workers are found at Title 8 Code of federal Regulations (CFR) §204.5(m).

The religious worker nonimmigrant visa (R visa) is an alternative to obtaining a permanent special immigrant visa under the RWVP. The R visa for nonimmigrants incorporates the basic criteria of the special immigrant visas. It also differs from the special immigrant visa, because the nonimmigrant R visa has a five-year maximum duration. Despite the fact that the actual visa classification is usually granted by DOS for the statutory limit of five years, immigration regulation permits an initial thirty-month validation period as contained in the Arrival-Departure Record, Form I-94. Moreover, a CIS extension may be granted for additional thirty-months, to reach the maximum of five years. Holders of R visas can reapply after the visa’s five-year expiration by leaving the United States for one year. The requirement of two years membership in the religious denomination remains, but in contrast to the special immigrant visa, the R visa applicant does not need to show work experience for two years prior to the application for the visa. Regulations governing the R visa are found at Title 8 CFR §204.2(r).

b. Religious Workers Covered

Ministers. The first category of special immigrant visa for religious workers requires that the individual enter the United States solely for the purpose of carrying on a religious vocation in a religious denomination. According to US immigration law, there is no “need” requirement, that is, the religious denomination does not have to express a need for the minister. Deacons may qualify as ministers if they are authorized to lead a congregation and perform associated ministerial functions. Regulation defines a minister as someone who is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct religious worship and perform other duties usually performed by authorized members of the clergy of that denomination; performs activities with a rational relationship to the religious calling of the minister; and works solely as a minister in the U.S. which may include administrative duties incidental to the duties of a minister.

Religious Occupation or Religious Vocation. The second category includes religious workers who qualify for a religious occupation or for a religious vocation according to the denomination’s standards. Religious occupation and vocation are defined in section E.1, “Religious Occupation and Religious Vocation,” below.

2. F Student Visa

Increased numbers of seminarians born outside of the United States are now accepted by US seminaries. The fact that many of these seminarians are born outside the United States presents immigration issues. As required by the *Program for Priestly Formation, Fifth Edition*, all seminarians are expected to have four years of undergraduate college experience with special studies in philosophy and theology and generally three years of theology beyond college before

they qualify for the diaconate and ordination to the priesthood. Bringing over a seminarian on a student visa, rather than on an R visa, is the recommended step. During the summer months seminarians in the course of their seminary experience are usually assigned to parishes for pastoral experience. One summer may be dedicated to clinical pastoral education, for example, in a hospital setting. A fair assumption may be made that all seminarians are in education and formation for the priesthood by virtue of a religious vocation.

Before enactment of the current religious worker provisions in the INA, seminarians were routinely admitted as students under the F visa classification. Since the F visa category is valid for the time it takes to complete all studies related to education and formation, the seminarian could take as long as needed to complete requirements for ultimate graduation and ordination. However, with the enactment of the current religious worker provisions in the INA, some seminarians have been admitted into the United States under the R visa. For those in the R visa category, the statutorily authorized stay of five years becomes a barrier to remaining in the United States to complete seminary studies, the duration of which frequently exceeds the 5-year limit. While the F student visa is not problem free, it remains the most viable option for seminarians.

D. Application Procedures

1. Special Immigrant Visas

The special immigrant visa entails a formal application process whereby a religious organization exempt from federal taxation petitions CIS for admission to the United States on behalf of a religious worker. The petitioner, using CIS Form I-360, submits the application along with the appropriate fee to the CIS California Service Center. CIS adjudicators sometimes request additional evidence from the petitioning entity, also known as a Request For Evidence

(RFE), from the petitioning entity. If the RFE is not properly answered within the time period allowed by CIS, the petition will be denied.

a. Documentary Requirements. An application should include:

- *Petition*: Form I-360 with religious worker supplement, fully completed with supporting documentation and accompanied by filing fee

- *Membership affidavit*: describing in detail relevant work experience from prior 2 years

- *Tax-exempt evidence*: proving that sponsor is a bona fide religious organization

- *Financial ability evidence*: proving that sponsor is able to maintain religious worker

Once the Form I-360 is approved, the next step to applying for permanent residency is through adjustment of status or consular processing. Adjustment of status allows a religious worker who is physically present in the United States, who has been in a lawful nonimmigrant status, and has not worked without authorization to attain status as a lawful permanent resident, provided that a visa is immediately available. There is a limited exception, which may be applicable to the religious worker who has been out of status as a nonimmigrant for less than six months. An immigration attorney can advise whether this is applicable. For adjustment of status, the Form I-485, Application for Adjustment of Status, with supporting documentation and the results of a medical examination is filed at the appropriate CIS Service Center. It is also important to request employment authorization to allow the person to work, pending adjudication, and to request advance parole to allow the applicant for adjustment of status to travel, pending adjudication. Usually, a significant period of time elapses between approval of the Form I-360 and adjudication of the Form I-485. A letter from the sponsoring religious organization indicating that the position is still open and available at the wages offered to the applicant should be included with the adjustment of status documentation. Unlike other

employment-based applications, no concurrent filing of the Forms I-360 and I-485 is permitted. If the applicant resides abroad, the CIS will forward the approved Form I-360 to the appropriate US consulate where the religious worker can undergo consular processing.

2. Nonimmigrant R Visas

The process of obtaining an R visa begins when the application is made to immigration authorities in the United States. Applications must utilize CIS Form I-129, Petition for a Nonimmigrant Worker, along with the religious worker supplement. The religious worker must show that he or she is qualified based on the criteria described above in section B.1.b, “Religious Workers Covered,” (minister, a person in a religious occupation, or a person who has a religious vocation) and that he or she will provide services to a bona fide religious organization, exempt from federal taxation, for at least twenty hours per week.

Sponsorship for religious workers varies with a given diocese or eparchy, with religious congregations, and with bona fide non-profit organizations affiliated with the Catholic Church. The R nonimmigrant approval notice states that the beneficiary religious worker is being admitted at the request of the petitioner, to work for the petitioner, but only as detailed in the petition and for the period authorized. The petition will be easier to approve with the petitioner as the employer who issues the W-2 and the beneficiary as the employee receiving the W-2. Other arrangements may be approved such as the diocese or eparchy as the petitioner that assigns the beneficiary to a particular parish that issues the W-2. The petition must clearly explain the arrangement and comply with applicable regulations.

a. Documentary Requirements. An application should include:

- Form I-129 fully completed with supporting documentation and accompanied by the filing fee

- tax exempt evidence proving that sponsor is a bona fide religious organization

Establishing proof of federal tax exemption for Catholic organizations is relatively simple. The pertinent page on which the organization is listed and the cover page showing the most current year of the Official Catholic Directory (OCD) should be photocopied. These pages and a copy the most recent group ruling letter from the Internal Revenue Service to the United States Conference of Catholic Bishops (USCCB) are submitted as proof that the particular Catholic organization is exempt under section 501(c) (3) of the Internal Revenue Code. The current USCCB group ruling letter is available at www.usccb.org/ogc. CIS adjudicators sometimes request additional evidence of the organization's tax-exempt status. For organizations listed in the OCD, a verification letter may be obtained by contacting the USCCB Office of General Counsel, ogc@usccb.org, or calling 202-541-3300.

- documentation that evidences the organization's nonprofit status
- worker's membership in the denomination for at least two years
- worker's qualifications as minister or other professional, or as to his/her religious vocation or occupation
- remuneration, including any salary arrangements or non-salary compensation
- name and location of site where applicant will work
- birth Certificate with certified English translation, if needed
- baptismal certificate with certified English translation, if needed
- clear copies of current and prior passport(s), including copies of visas and prior copies of I-94 cards
- proof of ordination for diaconate and priesthood, with certified English translation, if needed

- seminary transcripts, with certified English translation, if needed
- for those in consecrated life, proof of vows and renewals, with certified English translation, if needed
- resume or curriculum vitae, listing all current and prior employment as well as an education history
- all other immigration-related documents

b. Extensions of Stay, Recapture Policy, and Changes in Status

As stated above in section B.1.a, “Difference Between Special Immigrant and Nonimmigrant R Visas,” paragraph two, the R visa nonimmigrant status is usually granted for an initial thirty-months period and may be extended using the same CIS Form I-129. CIS has a policy which states that any days spent outside of the United States will not be counted toward the five-year statutory period when requesting an extension of stay, as long as the R nonimmigrant remains eligible for such status and provides independent documentary evidence that he or she was not physically in the United States for those days seeking to be recaptured. Acceptable evidence includes photocopies of passport stamps, I-94 arrival/departure records, and/or plane tickets. If the individual changes from one nonimmigrant status to the R visa classification, and travels abroad after this change, a new visa must be obtained abroad before the religious worker is allowed to reenter the United States.

c. Reporting Requirements

Sponsoring organizations or employers must notify DHS within 14 days if the R nonimmigrant is working less than 20 hours per week, or has been released or terminated from employment before the authorized period of stay. CIS strongly encourages use of electronic

notification via e-mail at CSCR-1EarlyTerminationNotif@dhs.gov. Paper notification before the fourteen-day calendar reporting window may be submitted to:

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

California Service Center

Attn: Div X/BCC ACD

P.O. Box 30050

Laguna Niguel, CA 92607-3004

d. Limitation of Stay, and Exception

A religious worker who has spent five years in the country under the R visa may not be readmitted or obtain an extension of stay, unless he or she has resided abroad and has been physically present outside the U.S. for the immediate prior year. CIS has stated that brief, intermittent visits to the United States will not break the one-year physical presence outside the United States. An exception to the limitation of stay applies to R visa holders who did not reside continually in the country and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations do not apply to religious workers who reside abroad and regularly commute to the U.S. to engage in part-time employment. Regulation provides for a clear and convincing standard to qualify for the exceptions. Clear and convincing evidence may include arrival and departure records, transcripts of processed income tax returns, and records of employment abroad.

e. Spouses and Children

Spouses and children under the age of twenty-one of the principal R nonimmigrant may accompany or follow to join the principal religious worker as an R-2 nonimmigrant as long as:

(1) the R-2 status is granted for the same period of time and subject to the same limits as the principal, regardless of the time such spouse and children may have spent in the United States under R-2 status; (2) neither the spouse nor children may accept employment while in the United States under R-2 status; and (3) the primary purpose of the spouse or children coming to the United States must be to join or accompany the principal R-1 religious worker. The R-2 dependents accompanying the R-1 principal may study in the United States.

3. Foreign Student Visas

a. Application Procedures

Only seminaries that are authorized to enroll foreign students may issue the necessary paperwork for the would-be seminarian to obtain the F nonimmigrant visa classification. CIS regulations require all schools duly authorized to enroll foreign students to have a designated school official (“DSO”), who must be familiar with the foreign student rules and who is authorized to annotate the Form I-20 A-B, Certificate of Eligibility of Nonimmigrant (F-1) Student Status. Authorized seminaries are registered on a web-based CIS system known as Student Exchange Visitor Information System (“SEVIS”). Through SEVIS, the seminary issues a Form I-20. As a general matter, the would-be seminarian must demonstrate to consular officials that he has a foreign residence that he does not intend to abandon, and that he will be able to complete his full course of studies without resorting to unauthorized employment while in the United States. Once the seminarian obtains the F visa, he may attend the seminary and remain in the United States as long as it takes to complete the entire course of study.

Foreign-born ordained priests sometimes enter the United States under the F visa to pursue graduate level studies. While here in the United States, they may desire to engage in ministry with remuneration in the context of the local diocese or eparchy. These advanced-study

priests, however, need to comply with the employment rules applicable to all F visa holders above. The diocese/eparchy needs to consider carefully whether it wishes to engage the services of an advanced-study priest. If it does, it should consider sponsoring the advanced-study priest for an R visa. With diocesan or eparchial approval, the priest could engage in ministry and also attend classes assuming all the basic requirements for the R visa are otherwise met. If the religious worker decides to pursue a full-time course of study, a change to the F-1 nonimmigrant status may be more appropriate. An immigration lawyer should be consulted before a decision is made. The F-1 status does not permit the seminarian to seek employment, except under specific limited conditions mentioned below (“Conditions of On-Campus Employment” and “Conditions of Off-Campus Employment”).

b. Documentary Requirements. The prospective seminarian must provide the following documents:

- SEVIS-based Form I-20 to establish school enrollment eligibility
- Form DS-156, nonimmigrant visa application
- supporting documentation on how the studies will be financed and nonimmigrant intent
- DS 158, special supplement applicable to all students
- valid passport
- 2 photographs
- appropriate application fees

c. Employment Issues

i. Conditions of On-Campus Employment

The F visa seminarian may be employed only under certain limited conditions. Any unauthorized employment is considered to be a violation of his F visa immigration status and

may be grounds for removal, or could adversely affect his ability to adjust status in the United States. On-campus employment is permitted, without DSO or CIS approval for no more than 20 hours per week during session and/or full time during vacation periods. It is recommended that the DSO annotate the Form I-20 to demonstrate that he has knowledge of the seminarian's employment.

ii. Conditions of Off-Campus Employment

Off-campus employment is permitted with DSO authorization and CIS approval when: (1) urgent financial need arises as a result of unforeseen circumstances, no more than twenty hours per week when in session and full time during holidays and vacation breaks; (2) internships with international organizations take place; (3) curricular practical training in work-study, internships, cooperative education, or with a sponsoring employer, who has an agreement with the school in an area that is an integral part of the curriculum or major field of study (aggregate limit of one year); and (4) non-curricular optional practical training either during pre-completion or post-completion of the course of study during vacation periods, after the completion of the degree, or after completion of the course of study (total period not to exceed 12 months).

iii. Legal Requirements for Off-Campus Employment

Off-campus employment must be authorized by the DSO who annotates the Form I-20, and an application for employment authorization, Form I-765, must be approved by CIS before beginning employment. If off-campus employment is based on severe economic hardship, both the seminarian and the DSO complete Form I-538, Certification by Designated School Official. The appropriate forms with fees must be submitted to the CIS office with jurisdiction over the case.

iv. Change in Status Following Degree Attainment

Once they complete seminary studies and are ordained to the priesthood, seminarians on an F visa may change status to the R visa nonimmigrant category as ministers of religion, as defined above in section B.2, "F Student Visa." Once in the R visa nonimmigrant category, they can begin accumulating the requisite two years of experience to apply for special immigrant status and to adjust status to permanent residents, with the assumption that a diocese or eparchy sponsors them. CIS generally views time spent on the F visa as a period of study, and not as a period not work, whether or not the seminarian is assigned to pastoral duties or has been ordained a deacon. Although many seminarians would prefer to obtain special immigrant status immediately upon graduation and ordination to the priesthood, the more cautious and prudent immigration route is to change to the R visa, work the requisite two years and obtain approval of the I-360 special immigrant petition, then adjust status to permanent residency. In this way, there can be no question concerning the accrued two-year work experience as a minister immediately prior to submitting the special immigrant petition.

E. Considerations and Potential Problems

1. Religious Occupation and Religious Vocation

Religious occupation is defined as follows: (1) the duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination; (2) the duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination; and (3) the duties do not include positions that are primarily administrative or supportive in nature such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental

to religious functions are permissible. Religious study or training for religious work does not constitute a religious occupation, but a religious worker may pursue study or training incident to status.

Religious vocation means a formal lifetime commitment, through vows, investitures, ceremonies, or similar indicia, to a religious way of life. The religious denomination must have a class of individuals whose lives are dedicated to religious practices and functions, as distinguished from the secular members of the religion. Examples of individuals practicing religious vocations include nuns, monks, and religious brothers and sisters. CIS 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.

2. Inspections

Onsite inspections by local CIS fraud units are typically conducted before approval of religious worker cases. Fraud investigators will visit employer locations to verify evidence submitted with petitions. Fraud inspectors use an audit compliance form that includes specific questions to ask when conducting site visits. Site visits may include a tour of the facility, a review of employer records, and interview with relevant personnel at the facility. If the first visit does not indicate actual or potential fraud, CIS may decide not to conduct audits for subsequent petitions filed in the near future. CIS may also perform a post-admission audit to verify that the religious worker is performing work as stated in the petition. Further, an inspection may take the form of a telephone call or email from CIS sent to the petitioner or representative, requesting certain documents to be emailed back to CIS.

3. Premium Processing

Petitioners for the R nonimmigrant applications may request premium processing from CIS. Premium processing is only available for petitioners who have successfully passed an onsite inspection. Currently for a \$1,225 processing fee, CIS will issue one of the following notices within 15 calendar days: an approval notice, a denial notice, a notice of intent to deny, a request for additional evidence. Premium processing requests are made by submitting the completed Form I-129 with supporting documentation and the Form I-907, Request for Premium Processing Service, and the two filing checks to CIS.

4. Attestation: Requirements and Logistical Considerations

An attestation, which must be executed by an authorized official of the prospective employer and submitted it along with the petition, contains twelve distinct elements.

Some aspects of the attestation are burdensome for petitioning organizations including dioceses or eparchies, especially the need to document the number of employees who work at the *same location* where the beneficiary will be employed and a summary of the type of responsibilities of those employees. Here, it is recommended that those diocesan or eparchial personnel responsible for working on religious worker cases coordinate the needed information with their respective Office of Human Resources, and attorneys if they are involved. It is recommended that they aggregate the positions as much as possible and provide a very brief description of the aggregated positions. Once the initial information is compiled, it should be retained and updated as needed in future attestations. Other aspects of the attestation (such as the number of religious workers holding special immigrant or nonimmigrant religious worker 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 nonimmigrant religious worker applications filed by or on behalf of any religious workers for employment by the prospective employer in the past five years) may be administrative burdens. This burden is especially true for large dioceses/eparchies that did not have a tracking system in place. The need for this information might be a catalyst for a greater centralization of religious worker cases in a given diocese or eparchy.

5. Experience Requirement and Break in Continuity for Special Immigrants

Any prior work experience can include work *not* in the same position as the job offered for the special immigrant category. Regulation allows for a break in the continuous two-year period immediately preceding the filing of the petition if the religious worker was still employed as a religious worker during the discontinued period, the break did not exceed two years, and the nature of the break was to further religious training or for a sabbatical that did not involve unauthorized work. Special immigrant religious workers must have been working as a minister, professional or nonprofessional in a religious occupation or religious vocation, either abroad or in lawful immigration status in the United States after the age of fourteen years continuously, for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed, and the beneficiary must have been a member of the petitioner's denomination throughout the two years of qualifying employment. Regulation permits for a break in the continuity of the work during the preceding two years. Such a break will not affect eligibility if: (1) the religious worker was still employed as a religious worker; (2) the break did not exceed two years; and (3) the nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States.

6. Compensation and Prior Employment/Required Documentary Evidence

Evidence relating to compensation should include evidence of how the petitioner intends to compensate the religious worker. Compensation may include salaried or non-salaried compensation, with the possibility of submitting evidence of compensation for similar positions past. If acquired in the United States, qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work must have been authorized under US immigration law. The requirement that past experience in the United States must have been authorized under immigration law may create problems for those R nonimmigrants that file special immigrant petition especially if there were any violations of status during the previous presence in the United States.

For those religious workers employed in the United States during the two years immediately preceding the filing of the application, the rule divides the evidence of prior employment into three classes: (1) for those who received salaried compensation, Internal Revenue Service (IRS) documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns are required; (2) for those who received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation, if available; and (3) for those who received no salary but provided for his or her own support, including support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other evidence acceptable to CIS.

7. Religious Organizations Affiliated with the Catholic Church

For a religious organization that is affiliated with the Catholic Church, such as a Catholic school, hospital, or religious institute, immigration regulation 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 purposes of the organization. Petitioners should also include organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization as well as a religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition. Although regulation only requires the religious denomination certification for religious organizations affiliated with the Catholic Church as described above, immigration practitioners are generally completing the religious denomination certification for all cases as a best practice.

8. Preconceived Intent to Immigrate and Seminarians

Federal immigration law presumes that all persons coming to the United States intend to stay here permanently with a few exceptions not applicable to seminarians. Therefore, those persons who want to enter or to remain in the United States on F nonimmigrant visas must demonstrate to CIS and consular officials that they intend to leave the U.S. at the expiration of their authorized stay. Visa denials by consular officials are final with no possibility of judicial review. A person whose nonimmigrant visa has been denied may ask for an advisory opinion from the Department of State Visa Office located in Washington, DC. Advisory opinions are just that – advisory – and are not required to be followed by the consular official.

DOS recognizes that students tend to stay in the country for much longer stays than other nonimmigrants. Typically, students are young, without employment, without family dependents, and without substantial personal assets. These factors that are considered in the context of continued ties to the home country when considering preconceived intent to immigrate. In this context, seminarians should be reminded that expressing a preconceived intent to immigrate may result in not qualifying for the F visa.

9. Change of Address Notification

CIS is now enforcing the requirement in immigration law that all non-citizens report a change of address (Form AR-11) within ten days of the address change. Failure to do so may subject the individual to criminal penalties and removal from the U.S.

10. Unlawful Presence

Immigration law imposes reentry restrictions on those who have not been lawfully admitted into the United States, who have remained in the U.S. by overstaying the time period granted under a nonimmigrant visa, or who have otherwise violated the terms and conditions of their nonimmigrant status. If an individual is unlawfully present for a continuous period of 180 days or more, and then voluntarily leaves the United States, the individual cannot reenter for at least three years. If the individual has been in unlawful status for a continuous period of one year or more, and then voluntarily leaves the United States, the individual may not reenter for at least ten years.

Case Study #1. Father B was duly sponsored by Diocese D. and entered the United States on an R visa on November 1, 2007, with a thirty-month validity date stamped by CBP. Diocese D. was content with Father B's ministry and sponsored a timely extension of the R visa which was granted until November 1, 2012. During the extension period, Father B. requested incardination

into Diocese D. and permanent immigration sponsorship. The canonical process between sending and receiving dioceses occurred, and the Form I-360 was submitted to CIS for adjudication on August 1, 2012. Due to complications adjudicating the Form I-360 including requests for additional evidence and supervisory review, the Form I-360 was finally approved on May 3, 2013. His adjustment of status application along with the applications for employment authorization and advance parole was filed soon thereafter. Father B. continued to work in Diocese D. throughout the entire period on the mistaken belief that merely filing the Form I-360 petition kept him in legal status. The applications for employment authorization and advance parole were approved on July 3, 2013. In late July 2013, Father B. left the United States to attend an important family gathering in his home country. When Father B. tried to re-enter to the United States on advance parole he was denied admission.

Working without authorization beyond November 1, 2012 (the five-year statutory limit on the R visa) triggered the three-year reentry bar upon leaving the United States on account of his unlawful status (he would not qualify for the exception or waiver to the bar). In addition, his application for adjustment of status would also be denied because he worked without authorization for more than six months and cannot avail himself of the limited exception to this rule.

This case illustrates three important points: (1) ensuring the timeliness of filing for certain benefits, here, the I-360 petition; (2) maintaining legal status at all times while in the country; and (3) departing, if needed, from the United States to avoid the unlawful presence bar, if needed.

Special Note on Students. Seminarians on the F visa are students who are on duration of status visas, and are only considered in unlawful presence if an official of the CIS or an immigration judge determines that the particular student is in unlawful status.

11. Moving About Without Permission

R visas are petitioner/employer-specific and persons in the United States may not change to another petitioner/employer without first obtaining CIS permission. To do so is a violation of immigration status.

Case Study #2. Father X. is sponsored by Parish A. of Diocese C. as a nonimmigrant R visa holder. Father X. is given an initial thirty months in that status upon his inspection and admission into the United States by CPB officials. After spending only six months in Parish A., Father X. is approached by Parish B., also part of Diocese C., with better placement incentives. Father X. moves to Parish B. without CIS approval. This is a violation of Father X.'s immigration status.

This case illustrates that moving from employer to employer without CIS approval renders the persons out immigration status and subject to removal.

12. Incorrect Classification and Admission

If a religious worker has been admitted incorrectly to the United States, the religious worker should visit a local CBP Deferred Inspection Site or port of entry to have the admission classification corrected. A list of Deferred Inspection Sites and ports of entry can be located at www.cbp.gov, under the "Ports" link at the bottom of the page. CBP has been eliminating the paper Form I-94, which is the arrival/departure record attached to the passport that has an annotation of the visa classification along with the date that the visa classification expires for

airport and seaport arrivals. CBP begun gathering arrival/departure information automatically from nonimmigrant electronic records and stamp the travel document (passport) to show the date of admission, class of admission, and the date that the traveler is admitted. If travelers need the information from their Form I-94 admission record to verify immigration status or employment authorization, the record number and other admission information can retrieve that information at www.CBP.gov/I94. As of this writing, CBP stills issue paper I-94 at land borders ports of entry.

13. Classification as Employee versus Independent Contractor

CIS expects religious workers R visas to be employed by sponsoring entities. If the religious worker on the R visa subsequently attempts to adjust status to permanent resident as a special immigrant, CIS seeks proof that he has been duly employed and requests tax information. It will be easier to provide copies of IRS Form W-2 or tax returns based on a Form W-2 than IRS Form 1099 documentation. Although neither law nor regulation forbids payment as independent contractor, CIS expects there to be an employment relationship and processing the applications will be less complicated with Form W-2 documentation.

F. Frequently Asked Questions

Q1. The Tourist Visa Priest. Can a priest in the United States on a tourist B-2 visa say Mass while visiting the United States? Can he solicit funds?

A1. Yes, a priest on a tourist visa may say either a public or a private Mass while visiting the United States. He should not, however, be compensated for his services or solicit funds incident to the Mass or otherwise. Either could result in rendering the priest in violation of his immigration status.

Q2. The “Sister Parish” Priest or Missionary Priest. What about missionary priests or representatives of “sister” or “twin” parishes who visit United States parishes?

A2. The same rules apply to (a) a priest representing a foreign “twin” or “sister” parish or (b) a foreign missionary. Neither such priest may be compensated or engage in fundraising while in the United States on a tourist B-2 visa. Should the US parish wish to collect money for its foreign “twin” or “sister” parish, or sponsor a collection for a foreign missionary priest, funds should be collected and transmitted by the US parish directly to the foreign “twin” or “sister” parish or foreign mission or religious institute, subject to due diligence to ensure that the funds are to be used by the foreign parish, mission or religious institute for the intended purpose.

Q3. Granting of Faculty. May a priest on a tourist visa be granted letters of faculty to minister in a diocese/eparchy?

A3. A priest may seek and be granted letters of faculty while on a tourist visa. However, he may not begin work within the diocese/eparchy without first obtaining a change of status to the R visa category. Unauthorized employment will jeopardize CIS approval of the change of status application.

Q4. Change from a Tourist Visa. Must a priest change to an R visa, or can he seek status as a lawful permanent resident?

A4. Changing from a tourist B-2 visa to an R visa is more convenient and is accomplished more quickly than seeking lawful permanent residency, which can take a significant amount of time. A caution is in order. If the change occurs too quickly, CIS might question the original intent of the person. In other words, CIS might believe that the person wanted to become a lawful permanent resident before entering the United States. This, then, raising the questions about immigrant intent and presumption of fraud.

Q5. Obtaining an R Visa Abroad. Must a priest, or any religious worker for that matter, have a petition approved by the CIS in the United States before he can seek an R visa at a US consulate abroad?

A5. Yes, the priest needs a pre-approved petition from CIS before a consulate will consider issuing an R visa to enter the U.S.

Q6. Leaving the United States During Adjustment of Status. When a religious worker applies for adjustment of status in the United States may he or she leave the United States before the application is approved?

A6. No. The religious worker may not leave the United States unless he first obtains advance parole from CIS authorities. To do otherwise would be construed as abandoning his adjustment of status application.

Q7. Advance Parole. What is advance parole?

A7. Advance parole is an immigration status that allows a person who cannot otherwise leave the United States before an application for adjustment of status or naturalization is adjudicated to depart without jeopardizing that adjudication.

Q8. Re-entry into the United States. In the situation described in Q6, what does the religious worker need to show immigration inspectors upon reentering the United States?

A8. It is very important to show the advance parole approval form regardless of whether the person has a valid R visa classification stamp on the passport.

Q9. Foreign Passport Renewal. How can a religious worker in the United States get his foreign passport renewed if it is about to expire?

A9. The religious worker should communicate with the nearest embassy or consulate of his home country in the United States. The embassy or consulate will be able to provide instructions on obtaining passport renewal.

Q10. Working While on the F Visa. Can seminarians on F visas work while in the United States?

A10. Yes. Seminarians on an F visa may work, but only under certain limited circumstances and conditions. See the section on seminarians and employment issues in the text of this chapter for more detailed information.

Q11. Sponsor's Financial Ability. What kind of financial evidence is required to prove that the sponsor has the ability to employ a religious worker?

A11. Assuming that a diocese is sponsoring the religious worker, an annual audit statement should be sufficient evidence to prove the financial ability requested by CIS.

Q12. Director of Music. May directors of music be sponsored as religious workers?

A12. It depends. Directors of music usually fall in the religious worker category for those in religious occupation. See text above for the definition of religious occupation.

Q13. Ethnic Ministry. May persons in ethnic ministry qualify as religious workers?

A13. Yes, they may. If the individual is a member of the laity, he or she would have to meet the religious occupation defined in the text above.

Q 14. Seminarians in Parishes. May a seminarian work at a parish during the summer and consider this on-campus employment?

A14. Probably not, unless the parish is “educationally affiliated” with the seminary. On-campus employment is defined as either performing employment “on the school’s premises” or “at an off-campus location which is educationally affiliated with the school”. Educational affiliation must be associated with the school’s established curriculum as an integral part of the student’s educational program. Given the type of work that might be expected of a seminarian in a parish, a good argument could be made that it may be an integral part of the program. However, if there is no “educational affiliation” between the parish and the seminary, the government would probably not consider it legitimate on-campus summer employment.

Q15. Seminarians/R visas and Drivers Licenses. Can seminarians or R visa holders obtain drivers licenses?

A15. It depends on state law. In addition, states that issue licenses will have validity dates matching the time period for admission as nonimmigrants.

Q16. Priests in Hospitals. Can a priest who is sponsored by a diocese for an R visa work as a chaplain for a private and/or Catholic health care institution?

A16. The answer to this question depends on the information provided in the diocesan sponsorship application. If the diocese describes the priest’s duties, in part, as being assigned to hospitals or health care institutions affiliated with the diocese and continues to pay the extern priest, it is probably allowed. However, if the health care institution pays the priest’s salary, and

verifies and retains the employment eligibility forms, this would probably be considered a violation of the R visa. The same analysis would apply for a private health care institution.

Q17. Hospital Sponsorship. Does a hospital have to sponsor priests separately?

A17. A hospital is not a religious organization. The statute allows one of two entities to sponsor religious workers and both must be religious organizations: (1) a bona fide nonprofit religious organization (meaning an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations); or (2) a bona fide organization which is affiliated with the religious denomination (meaning an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code as it relates to religious organizations). A hospital would fall under the second category. See text above for discussion of religious organizations affiliated with the Catholic Church.

Q18. Part-time Associate Pastor. Can a part-time associate pastor qualify under the R visa?

A18. Yes. The CIS views R visas as employment-related and regulation requires that the R visa holder work at least 20 hours per week. However, the R visa holder may not engage in employment that is not authorized by CIS based on information contained in the Form I-129 application.

Q19. Resident Priests. Can a resident priest qualify under the R visa?

A19. Not on the sole basis of being a resident priest. Resident priests may be associated with a parish for limited purposes, such as saying mass or living in the rectory, yet have full time occupations elsewhere in the diocese. Under these limited circumstances, it is difficult to foresee

the description of resident priest satisfying the statutory and regulatory requirements for the R visa.

Q20. New Visa in U.S. Is there a way to get a new visa without leaving the U.S.?

A20. Unfortunately not for the R visa. Department of State regulations allow certain nonimmigrants who otherwise qualify to obtain a new visa at the Visa Office in St. Louis, Missouri, but the R visa is excluded (only E,H, I,L,O & P visas qualify under the regulations).

Q21. Permanent Residents with Long Absences Abroad. Is there a way to preserve the lawful permanent residency status in the naturalization context for a religious if he or she has to leave the United States for more than a year?

A21. Yes there is. To qualify for naturalization (obtaining US citizenship) a lawful permanent resident must maintain at least five years continuous residence immediately preceding the date of a petition for naturalization, including physical presence in the United States for periods totaling at least half of that time (in addition to continuous residence in a state or CIS district in which the petition is filed for at least three months preceding the filing for the naturalization petition and continuous residence in the United States from the date of the filing to the time of naturalization). The INA has a special provision to cover these circumstances that applies to two categories of religious: priests who must leave the United States solely for the purpose of performing ministerial or priestly functions, and missionaries, nuns, or brothers, engaged solely by a religious denomination having a bona fide organization in the United States Both categories must comply with 4 requirements: (1) after being admitted in the United States as a lawful permanent resident, the person must have been physically present and residing in the U.S. for at least one year without interruption; (2) the person's absence was for the purpose of performing religious functions; (3) the Form N-470, Application to Preserve Residency for

Naturalization Purposes, must be submitted (either pre- or post-absence) wherein the religious bears the burden of proving that the absence was solely to perform religious or ministerial duties; and (4) upon applying for naturalization, the religious must prove to CIS that the period of absence was related to the allowed activities and attendant purpose.

Q22. Other Visas for Religious Activities. If a person does not qualify for an R visa and wants to enter the United States to participate in certain religious activities, is there any other visa available?

A22. Yes, there is. In cases where an applicant is coming to perform voluntary services for a religious organization and does not qualify for R visa, the B-1 visa remains an option, provided that the applicant meets the requirements under DOS regulations contained in the Foreign Affairs Manual (FAM), even if he or she intends to stay a year or more in the United States. There are three possibilities under the B-1 visa: (1) ministers of religion proceeding to the United States to engage in an evangelical tour, who do not plan to take an appointment with any one church, and who will be supported by offerings contributed at each evangelical meeting (FAM 41.31 N9.1-1); (2) ministers of religion, who temporarily exchange pulpits with US counterparts, who will continue to be reimbursed by the foreign church and will draw no salary from the host church in the U.S. (FAM 41.31 N9.1-2); and (3) members of religious denominations, whether ordained or not, entering the United States temporarily for the sole purpose of performing missionary work on behalf of a denomination, provided that the work does not involve the selling of articles or the solicitation or acceptance of donations and provided the minister will receive no salary or remuneration from US sources other than an allowance or other reimbursement for expenses incidental to the temporary stay. "Missionary work" for this purpose may include religious instruction, aid to the elderly or needy, proselytizing, and other

such activity. It does not include ordinary administrative work, nor should it be used as a substitute for ordinary labor for hire (FAM 41.31 N9.1-3).

G. Useful Publications, USCIS Forms, and Resources

Religious Workers: A New Regulatory Regime, Carlos Ortiz Miranda (2009)(copies available upon request and reprinted in Immigration and Nationality Law Handbook 2009-2010, American Immigration Lawyers Association)

Form AR-11, *Change of Address*

Form DS-156, *Nonimmigrant Visa Application*

Form I-9, *Employment Eligibility Verification*

Form I-94, *Arrival-Departure Record*

Form I-129, *Petition for Nonimmigrant Worker*

Form I-131, *Application for Travel Document*

Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*

Form N-470, *Application to Preserve Residence for Naturalization Purposes*

Form I-485, *Application to Register Permanent Residence or to Adjust Status*

Form I-765, *Application for Employment Authorization*

Form I-797A, *Notice of Action*

Form I-907, *Request for Premium Processing Service*

Source: www.uscis.gov (link to Immigration Forms)

Immigration Options for Religious Workers, An AILA Occupational Guidebook, American Immigration Lawyers Association (2010), available at books@aila.org

Resource: Catholic Legal Immigration Network, Center for Religious Immigration and Protection, 8757 Georgia Avenue, Suite 850, Silver Spring MD 20910; www.cliniclegal.org

H. Checklist

- What are the needs of the diocese, religious entity, or religious institute for sponsoring seminarians or religious worker?
- Depending on those specific needs, what is the most appropriate classification for the position?
- Has an immigration lawyer or BIA accredited representative been retained to assist with the immigration process?
- Has the immigration process been coordinated with the canonical process?
- Does the diocese, religious entity, or religious institute has a system in place to monitor religious workers while in the United States?
- Does the sponsoring entity have a system in place to notify CIS when a religious workers on the R visa is working less than 20 hours per week, or is released or terminate