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USCIS PUBLISHES FINAL RULE THAT SIGNIFICANTLY REVISES THE REGULATIONS THAT GOVERN THE PROCESS FOR OBTAINING RELIGIOUS WORKER VISAS

The United States Citizenship and Immigration Services (USCIS) has published a new rule that significantly revises the regulations governing the process for obtaining religious worker visas, especially non-immigrant R-1 status visas.

The text of the rule, along with extensive commentary by the USCIS, is available in [pdf format](#).

A summary of the rule is contained on pages 6 to 14 of the 85-page document with the actual text of the rule beginning on page 61. The U.C.I.S. has released new version of Forms I-129 (for non-immigrant religious workers) and I-360 (for special immigrant religious workers) that reflect the changes brought by the new rule, but as of December 9, 2008, continue to accept the previous versions of the two forms.

The most important change is that foreign nationals seeking to enter through R-1 status as non-immigrant religious workers can no longer self-petition. Instead, prospective employers now must submit Form I-129 Petitions on the employee's behalf. See New 8 C.F.R. 214.2(r)(7). This new requirement does not apply to foreign nationals seeking special immigrant religious worker status under INA § 101(a)(27) (C), who may continue to self petition by filing a Form 360 themselves, or have their prospective employers do so on their behalf. See New C.F.R. § 204.5(m)(6).

The new rule also requires that foreign nationals seeking special immigrant or non-immigrant religious workers status to submit an attestation by the proposed employer attesting to a number of factors, including but not limited to:

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- i. That the employer is a bona fide non-profit religious organization or is affiliated with a religious denomination that is exempt from taxation;
- ii. The number of members of the employer's organization, the number of aliens holding religious worker status in the organization, and the number of such petitions filed by the employer in the last five years;
- iii. The total compensation, including salary and benefits, to be paid to the foreign national;
- iv. A detailed description of the foreign national's duties; and,
- v. That a foreign national seeking non-immigrant worker status will be employed a minimum of 20 hours per week, and a foreign national seeking special immigrant worker status will be employed a minimum of 35 hours per week. Foreign nationals seeking special non-immigrant religious worker status can sign the attestation themselves as long as they are authorized officials of the sponsoring employer. See New 8 C.F.R. 204.5(m)(7) & 8 C.F.R. 214.2(r)(8).

The old rule noted that USCIS could require verification of information provided to it by the petitioner or proposed employer by any means it deemed appropriate, but was rather vague on what those means could entail. The new Rule is much more explicit, and provides that "evidence submitted" in support of both immigrant and non-immigrant religious worker petitions:

May be verified by USCIS through any means determined appropriate by USCIS, up to and including on-site inspection of petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization

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

See New 8 C.F.R. 204.5(m)(12) & 214.2(r)(16).

Other changes made by the new rule include:

- The initial period of admission for non-immigrant religious workers is reduced from 3 years to 30 months. Religious workers are allowed one extension of up to an additional 30 months, for a total of 5 years in R-1 status. See New 8 C.F.R. 214.2(r)(5).
- The new rule added the provision that the USCIS may revoke a non-immigrant worker petition “at any time, even after the expiration of the petition”. See New 8 C.F.R. 214.2(r)(18).
- The new rule added mechanisms for petitioners appeal the denial of a non-immigration petition, or the revocation of a petition. See New 8 C.F.R. 214.2(r)(17) and (19).
- The new rule seeks to clarify requirements regarding compensation for immigrant and non-immigration religious worker petitioners. In particular, non-immigrant workers “[w]ith limited exceptions [] must [now] be compensated either by salaried or non-salaried

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compensation If there is to be no compensation, the petition must provide verifiable evidence that such non-compensated religious workers will be participating in an established, traditionally non-compensated, missionary program within the denomination The petitioner must also provide verifiable evidence of how the [foreign national] will be supported while participating in that program.” *See* USCIS summary of the rule appears on [page 6 in the full-text](#).

An important aspect of the former rule which has not been changed is non-immigrant and special immigrant petitioners must still file a determination letter from the Internal Revenue Service (IRS) of the tax exempt status of the religious organization under the Internal Revenue Code (IRC). *See* 8 C.F.R. 204.5(m)(3)(i)(A).

According to the USCIS, the changes discussed above are intended “to improve the Department of Homeland Security’s ability to detect and deter fraud and other abuses in the religious worker system.” In particular, the new requirement that prospective employers file I-129 Petitions on behalf of applicants for non-immigrant religious worker visas is intended to “allow USCIS to verify that the petitioner and the job offer are legitimate prior to the issuance of a visa and admission of the religious worker to the United States.” *See* [USCIS’s announcement of the new rule](#).

Because of the stricter requirements for obtaining all religious worker visas, and USCIS’s explicit emphasis on verification, including intrusive inspections of the proposed employers facilities and paperwork, it is now more important than ever for those who seek to enter as religious workers, and those who would employ them, to be represented by competent outside counsel throughout the process. In addition, such employers should ensure that their Form I-9 Verification procedures are

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adequate before they seek to sponsor any religious worker visa applicants. It must be stressed that the attestation requirement and the potential verification process by USCIS may lead to the disclosure of Form I-9 verification violations, and stiff civil sanctions and even criminal sanctions.

For a broader discussion on Form I-9 compliance and immigration law and worksite enforcement in general see the GoffWilson white paper on the topic, [An Employer's Introduction to Immigration Law and Worksite Enforcement.](#)