


**CATHOLIC LEGAL
IMMIGRATION
NETWORK, INC.**

**NCDVD 2018:
Introduction to Religious Worker
Immigration Law**
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What We'll Cover

- Immigration Law Basics
- B-1 / B-2 - Visitors
- F-1 – Students
- R-1 – Religious Workers
- Permanent Residence Overview



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“Alphabet Soup”

- Immigration law relies heavily upon acronyms for agencies, processes, and immigration categories.



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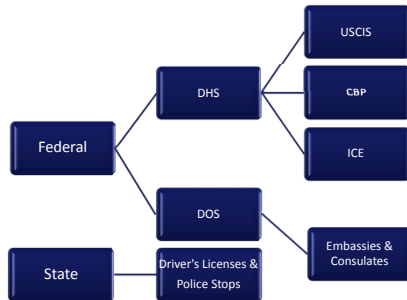
Common Acronyms & Terminology

AOS = Adjustment of Status	ICE = Immigration Customs Enforcement
Beneficiary = Foreign National	INA = Immigration and Nationality Act
B-1 / B-2 = Visitor Category	INS = Immigration and Naturalization (pre-DHS)
CBP = Customs and Border Protection	Petitioner = Religious Organization
CFR = Code of Federal Regulations	PR = Permanent Resident
COS = Change of Status	(aka "Green Card")
DHS = Department of Homeland Security	R-1 = Religious Worker Category
DOS = Department of State	USCIS = U.S. Citizenship & Immigration Service
EOS = Extension of Status	VWP = Visa Waiver Program
F-1 = Student Category	
FN = Foreign National	



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Immigration Law Complexity



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USCIS CBP

ICE



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Typical Agency Interaction

For B-1/B-2 and F-1

DOS → CBP

For R-1

USCIS → DOS → CBP




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FOUR MOST COMMONLY CONFUSED IMMIGRATION TERMS




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Basic Immigration Terms



- Nonimmigrant
- Immigrant
- Visa
- Status

These concepts are the building blocks of immigration law.



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Who is a Nonimmigrant?

A nonimmigrant

- is admitted to the U.S. for a temporary period of time.
- is limited in length of time in the U.S.
- is limited in activities he/she can do in the U.S.

Examples: Students (F-1) and Religious Workers (R-1)



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Who is an Immigrant?

- An immigrant is admitted to the U.S. without restriction as to length of stay (i.e. is arriving to stay permanently) or who becomes a permanent resident within the U.S.



- NOT a U.S. Citizen
 - Cannot vote in State or Federal elections.
 - Permanent Residents are not guaranteed the right to remain inside the United States.



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What is a Visa?

A Visa:

- is the official authorization in a passport allowing a person to apply for ENTRY into a country.
- is the key to ENTERING U.S.
- shows the last date on which an individual may apply to ENTER the U.S.



Nonimmigrant Visas are applied for through the Department of State, Form DS-160.

Note: Canadians are Visa Exempt.



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Common Questions on Form DS-160

- Countries visited last 5 years
- Languages spoken
- Previous visa denials
- Previous trips to the U.S.
- Family members in the U.S. (and their status)
- Work & Educational History
- SECURITY QUESTIONS



Potential Problems at Visa Stage

- Denials often based on lack of adequate ties abroad (typically for F-1 students) and misunderstanding of R-1 (Religious Worker) categories.
- “Administrative Processing” (Case falls into DOS “black hole.” Possible lengthy delays for security background checks.)
- Petition approval is somehow not verified in Petition Information Management Service (PIMS) system. (PIMS serves as primary communication between USCIS & DOS.)



Visa is Granted / Approved

- Passport returned with visa.
- Visa validity dates vary according to the approved petition validity dates and reciprocity table.
- A visa does **NOT** automatically guarantee admission into the U.S.



R-1 Nonimmigrant Visa

A Visa Type is "R" for Regular versus "D" for Diplomatic

B Visa class is "R-1" for R-1 Religious Worker.

C Visa Expiration Date - expiration date is the last date on which an individual may apply to enter the U.S.

D Visa Number (in red)

E Petitioner and I-129 Receipt #

F Visa Issue Date

G "M" is for "Multiple Entries"

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Recent Changes to Visa Process

"Extreme Vetting"

- Proposal to require ALL visa applicants to provide social media account information for past five years.
- Visa applicants also may be asked to provide the following additional details:
 - All prior passport numbers
 - 15 years of residence, employment, and travel history (including source of travel funds)
 - The names of all children, siblings, and current and former spouses
- "Voluntary" but applicants who do not respond may have their visa applications delayed or denied.
- The new questions are not required of all visa applicants. Only foreign nationals flagged by a U.S. consular officer for additional security screening will be asked to complete them. U.S. consulates have wide latitude to subject individual applicants to additional screening.

CLINIC 17

What is Status?

Status

- is the period of time an individual is authorized to stay (i.e. remain) in the U.S.
- is granted on admission to the U.S. at Port of Entry by CBP and can be extended or changed by USCIS within the U.S.
- is shown on the electronic I-94 or I-94 card.

ONLY AN I-94 PROVES STATUS.

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I-94 Arrival/Departure Record

Today, foreign nationals access their electronic I-94 immediately after entering the U.S. on the CBP website.

<https://i94.cbp.dhs.gov>

This electronic document serves as proof of the foreign national's status inside the U.S. It must be printed EACH time a foreign national enters the United States.

Exception: May be issued white I-94 card when traveling to the U.S. from Mexico or Canada.



IMPORTANCE OF THE I-94

The I-94 serves as proof of a foreign national's status inside the U.S.

- Should ALWAYS keep a copy in wallet.
- If I-94 is not available online, then must contact local CBP's Deferred Inspection office at local airport to ensure information is entered into system and get copy of I-94.
 - <https://www.cbp.gov/contact/deferred-inspection/overview-deferred-inspection>
- Employer should ALWAYS have a copy of most recent I-94 on file.



Other Ways to Get New I-94

A new I-94 can also be issued on the bottom of an I-129 or I-539 approval notice for the following petitions:

- change of status
- extension of status
- change of employer



I-129 Approval Notice with I-94 Card

Sample Approval notice

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Status	vs.	Visa
<p>Legal category admitted by CBP.</p> <p>Dictates the purpose of this visit.</p> <p>Dictates what is permissible and prohibited.</p> <p>Dictates the duration of the visit.</p> <p>May be able to change status inside U.S.</p>		<p>Issued by a U.S. embassy or consulate abroad.</p> <p>Stamp/sticker laminated into the passport.</p> <p>Can expire while in the U.S.</p>

EXAMPLE: Religious Worker enters U.S. using R-1 Visa and is granted R-1 Status to remain in the U.S.

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COMMON TYPES OF NONIMMIGRANT STATUS: B-1 / B-2 & VWP

CLINIC

B-1 / B-2 Visitor



- They are here to visit!
- Cannot be an employee or paid wages.
- Length of stay typically no longer than 6 months. CBP makes determination at the time of entry into U.S.
- Travel expenses can be reimbursed.
- Can receive room and board.
- B-1 can be used by ministers exchanging pulpits.

What visitors CAN do:

- Attend Mass
- Live in Community
- Receive Room and Board
- Attend Meetings for Religious Order
- Limited missionary work



What visitors CANNOT do:

- Get paid a stipend for saying Mass
- Request donations (NO SOLICITING) or receive money on behalf of a community or group outside the U.S.
- Work in ANY capacity
- Visiting clergy should never be listed on parish bulletins (i.e. "in residence") or parish website.




Can a Visitor Change Status?

- Depending upon the circumstances, someone in visitor status may be able to change to another status to work or attend school.
 - They cannot start those activities until a Change of Status is approved.
- This process is not as straightforward as it was two years ago. Multiple issues to consider now.



The Importance of Intent


- What did the foreign national state was the reason for the visa request at the consulate? What did they say the purpose of the trip was when talking to CBP at the Port of Entry?
 - Concerns are whether the FN intended to remain in the U.S. when applied for the visitor visa. Possible fraud and/or misrepresentation.
- Sometimes, circumstances change after a person arrives in the U.S. and it is appropriate to apply for a change of status. More often in today's immigration climate, it is preferable to return home, apply for the new visa, and then reenter in appropriate status.



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Timing is Crucial – The 90-Day Rule

The State Department amended the FAM in September 2017 to provide consular officers with broader grounds to find that foreign nationals misrepresented their intentions when they came to the United States on nonimmigrant visas. A finding of fraud or misrepresentation under INA § 212(a)(6)(C)(i) can result in a permanent ground of inadmissibility.


Although this provision is popularly known as the "90 Day Misrepresentation Rule," the FAM is not codified law or regulation, but merely sub-regulatory guidance for consular officials abroad.




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Timing is Crucial – The 90-Day Rule

- Updated FAM provision at 9 FAM 302.9-4(B)(3)(g)(2) covers instances of conduct that may be inconsistent with representations that visa applicants made to consular officers when applying for nonimmigrant visas or to DHS officers at US ports of entry at the time of admission.
- The inconsistent conduct must have occurred within 90 days of entry, and the FAM instructs consular officers to presume that the applicant's representations about engaging in status compliant activity were willful misrepresentations of his or her intention to seek a visa or entry into the United States.
- If the foreign national engaged in conduct inconsistent with his or her nonimmigrant status more than 90 days after entry, no presumption of willful misrepresentation arises, although consular officers may still find facts that provide a reasonable belief that the foreign national misrepresented his or her purpose of travel at the time of applying for a visa or admission into the US.


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Timing is Crucial – The 90-Day Rule

- Examples of inconsistent conduct that can result in a presumption of willful misrepresentation:
 - Engaging in unauthorized employment;
 - Enrolling in a course of academic study, if such study is not authorized for that nonimmigrant classification (e.g. B status);
 - A nonimmigrant in B or F status, or any other status prohibiting immigrant intent, marrying a United States citizen or lawful permanent resident and taking up residence in the United States; or
 - Undertaking any other activity for which a change of status or an adjustment of status would be required, without the benefit of such a change or adjustment.



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Wishing vs. Intending

- Sometimes, a foreign national may visit the U.S. to tour a school. However, they have not been accepted or decided to attend the school. They want to know if they would like it and whether it would be a good program for them before making that decision. They might “wish” that the school would be a good fit and that it would be a place for them to study.
 - However, a “wish” is not the same as “intent.” If they visit the school and it is not a good option for them, they will return home. They do not intend to stay simply because they are visiting.



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Extending Visitor Status

- A foreign national can apply to extend their B-1/B-2 status for up to six additional months for a total of one year in visitor status.
- The extension is filed on the Form I-539.
- Must have good cause to request the extension.



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I-539 Petition Processing Times

Regular Processing:

- Cost = \$370
- Processing time is dependent upon which service center processes the application AND status being requested.

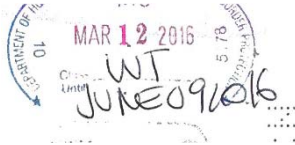


Common Reason for I-539:

- Extend B-1/B-2 status
- Change to F-1 status
- Family members of R-1 beneficiary need to extend / change status

Visa Waiver Program (VWP)

- VWP allows citizens of certain countries to travel to the U.S. for tourism or business for stays of 90 days or less without first obtaining a visa.
- Stamp can be "WT" (waiver tourist) or "WB" (waiver business) or even "VWP."
- Done in lieu of going to the consulate for a visa interview and stamp.



Cannot Change Status or Extend Stay with Visa Waiver entry.


<https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>

VWP Eligible Countries

- Andorra
- Australia
- Austria
- Belgium
- Brunei
- Chile
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Japan
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Monaco
- Netherlands
- New Zealand
- Norway
- Portugal
- San Marino
- Singapore
- Slovakia
- Slovenia
- South Korea
- Spain
- Sweden
- Switzerland
- Taiwan
- United Kingdom

When to Use VWP

- Must have valid ESTA (Electronic System for Travel Authorization) Approval
- Ex: Nun from England coming to U.S. for short trip to attend Silver Jubilee.
- Ex: Priest from Spain coming to U.S. to see seminarian graduate.




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COMMON TYPES OF NONIMMIGRANT STATUS: F-1 STUDENT

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F-1 Students


- Full-time student at immigration-approved educational institution.
- Diocese / Religious Organization will cover costs and tuition.
- Must show non-immigrant intent.
- Admitted for D/S (duration of status).
- Generally used by seminarians & candidates in religious formation.
- Cannot enter the U.S. more than 30 days prior to start of academic program.



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Ways to Obtain F-1 Status

- If outside the U.S., use I-20 issued by school to apply for the F-1 visa at the U.S. Consulate. (Will have visa interview.)
- If in the U.S. and changing status, work with school to file for a change of status to F-1 with USCIS. (Form I-539) No interview.
- If in the U.S. in F-1 status and transferring to a new school, must be accepted at the new school and notify current school of transfer.

 CLINIC 40

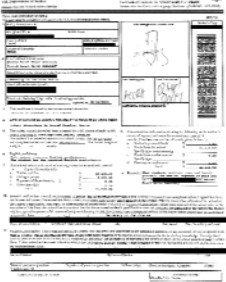
Who is the DSO?


- The Designated School Official (DSO) uses the Student and Exchange Visitor Information System (SEVIS) to issue an I-20.
- The main point of contact for all foreign-born students.
- Person who will assist the student in obtaining work authorization.
- When in doubt about whether activity is allowed while in F-1 status, the DSO is a good place to start.

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What is an I-20?

- The I-20 shows how long the student is expected to attend school and provides relevant information about the program and the foreign national.
- SEVIS tracks and monitors nonimmigrant students and exchange visitors.
<https://www.ice.gov/sevis>



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Duration of Status (D/S)

- Students in F-1 status are admitted for the duration of their academic program.
- Their I-94 should have "D/S" rather than a specific ending date.
- Schools can extend and/or shorten their programs without formal filing of paperwork with USCIS.



Admittance Stamps for F-1 Status



F-1 Status and Work

A student in F-1 status CANNOT WORK UNLESS obtains permission from the School / DSO.

Examples:

- Curriculum Practical Training (CPT) = PT or FT. Must be part of curriculum. Job offer required.
- Optional Practical Training (OPT) = PT or FT. No job offer required. Related to major but does not need to be part of curriculum.

OPT for Work after Graduation

Seminarians should speak to DSO early in their program about post-graduate OPT.

Allows student to work for up to 12 months following graduation.

Noted on I-20.

Must file EAD application 3 months before graduation.

***Will not get full 12 months post-grad if use OPT during school. Other types of work authorization during school can also affect eligibility.*



EAD Card



Denial of an F-1 Visa: Immigrant Intent

- U.S. consular officers automatically assume that ALL applicants have immigrant intent. It can be more difficult for students to overcome the presumption. Even more so for religion students, because they have no spouse or job waiting for them abroad.
- For more info on immigrant intent & visa denials: <https://travel.state.gov/content/visas/en/general/denials.html>

F-1 Updates

Effective August 9, 2018, students (F, M, J) will begin accruing unlawful presence:

- The day after the student fails to pursue his/her course of study or authorized activity OR the student engages in unauthorized activity (e.g. unauthorized work).
 - The day after student completes his/her course of study, including any authorized practical training (e.g. optional practical training) PLUS the authorized grace period (normally 60 days).
 - The day after the student's I-94 record expires (if the I-94 record has an expiration date other than "D/S")
 - The day after an immigration judge or in some cases the Board of Immigration Appeals, orders the student excluded, deported or removed.
- **Previously an immigration violation; now unlawful presence.

R-1 PROCESS FOR RELIGIOUS WORKERS

R-1 - Basic Requirements

- Member of denomination for two (2) years.
- Denomination is a nonprofit, federally tax-exempt religious organization in the U.S.
- Coming to U.S. to work at least 20 hours per week.
- Coming for a temporary period of time -- not more than five (5) years.
- Must fit into one of three (3) categories:
 - Minister
 - Religious Vocation
 - Religious Occupation



Minister (Priest or Deacon)



- Authorized by a recognized denomination to conduct religious worship and perform other duties traditionally reserved for the clergy.
- Fully trained according to the denomination's standards.

Deacons Preparing to Graduate

- Deacons DO qualify under the minister category.
- If a Deacon will graduate in May with ordination in early June, you need to start planning six months in advance for post-graduation work authorization.
- In December, decide whether the Deacon will use OPT for a year after graduation (speak to DSO) or if he will transition to R-1 status.
- If he is transitioning to R-1 status, start the process in DECEMBER before graduation!

Religious Vocation

What is a Vocation?

- formal lifetime commitment
AND
- demonstrated by vows or other ceremonies
AND
- evidence of a traditional established class different from secular members.


The vocation category is appropriate for religious brothers and sisters who have taken their final vows.



Religious Occupation

What is an Occupation?


- Primarily relates to traditional religious function
- AND
- Recognized as a religious occupation within the denomination
- AND
- Primarily related to, and clearly involves, carrying out the religious belief or creed of the denomination.



But remember...

- Limited administrative duties allowed.
- Clerks, maintenance workers and fundraisers are specifically excluded.
- Does not include study or training, except if incidental to status.

This category is appropriate for religion teachers and religious sisters / brothers who have not taken final vows or are entering formation.


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Overview of R-1 Process

Sponsor files I-129 Petition with USCIS inside the U.S.

- I-129 Petition is approved.

➔


Beneficiary applies for R-1 Visa at U.S. consulate (DOS) abroad.

- R-1 Visa is granted/approved.

➔

Beneficiary applies for entry at Port of Entry with CBP.


- FN receives R-1 status via I-94.


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I-129 Petition Processing Times

Regular Processing:


- Cost = \$460
- Current processing time is **5-7 months.**
 - **Plan ahead!**



Premium Processing:

****15 days or less with additional fee of \$1225; \$1410 after October 1, 2018**

- Only available for religious organizations that have had successful USCIS pre-adjudication site inspection.


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Regular Processing Times

- Significant delays over past year for I-129 petitions for religious workers.
- Petitions cannot be filed more than six months prior to start date!
- Be prepared for delays and make any possible accommodations (i.e. flexibility in assignments) for this fact.

Check processing times for California Service Center at <https://egov.uscis.gov/cris/processTimesDisplayInit.do>



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Maintaining Lawful Status

- | | |
|---|---|
| <p>Terms of Stay</p> <ul style="list-style-type: none"> • Abide by the terms of the visa. • Can only do what is permitted in status. • Compensation. | <p>Period of Stay</p> <ul style="list-style-type: none"> • Watch out for the expiration date on I-94. • Must leave the U.S., extend, or change status before the I-94 expiration date. |
|---|---|



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To Maintain Status....

- Timely file extension of status requests.
- Eligible for five years in R-1 status BUT
 - Recapture of time is available.
 - New R-1 period (5 more years) after 12 months outside U.S.
- New Employer = New I-129 Petition
 - Must continue to work for prior employer until new petition is approved.



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Notification Requirement

- Notify USCIS within 14 days when a person in R-1 status is no longer with the Diocese or is working less than the required number of hours.
- Email Address: CSCR-1EarlyTerminationNotif@dhs.gov
- Include the following information:
 - Reason for notification or late notification;
 - USCIS receipt number of approved R-1 petition;
 - Diocesan name, address, and phone;
 - R-1 beneficiary information (name, date of birth, country of birth, last known physical address and phone).



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REMINDERS!!



Traveling Abroad: Visa, Visa, Visa



A trip outside the U.S. can affect immigration status.


- Employer may need to file a new I-129 Petition and/or FN may need to apply for a new visa.
 - May need to renew passport (passport should be valid at least 6 months beyond the expiration date of I-129 petition and beyond the entry date into the United States)
- Traveling without proper preparation could mean months outside the U.S.




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“Show Me Your Papers”


- FN should have copy of their most recent I-94 with them at all times.
- With ICE increasing enforcement and local law enforcement assisting them in their efforts, it's important for FN to always have proof of their status.




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Site Visits


- These are unannounced pre- and/or post-adjudication site inspections to verify information contained in certain visa petitions.
- Always provide most up-to-date and correct phone number and email address when filing the I-129 petition. Check daily for USCIS communication.
- Assign designated person to respond to USCIS. Inform reception staff and other personnel to direct the USCIS officer (via phone or in person) to the designated person.
- Keep beneficiary's and religious organization's documents easily accessible and readily identifiable.
- Notify USCIS of all non-citizen address changes (Form AR-11).




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“But I don't wanna...”

- Always take site visits seriously. Be polite and respectful.
- Negative, incorrect, or vague responses during a site visit can have SERIOUS consequences.
- For a pending I-129 petition - NOID (Notice of Intent to Deny).
- For an approved I-129 petition - NOIR (Notice of Intent to Revoke).



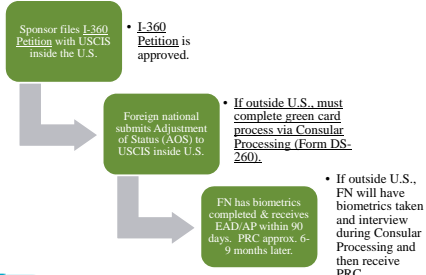
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OVERVIEW OF PERMANENT RESIDENCE (i.e. Green Card)




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LPR Process for Religious Workers



- I-360 Petition is approved.
- If outside U.S., must complete green card process via Consular Processing (Form DS-260).
- If outside U.S., FN will have biometrics taken and interview during Consular Processing and then receive PRC.



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I-360 Requirements

Same basic requirements as R-1 except:

- Job offer must be for a full-time (average of at least 35 hours per week) compensated position.
- Must have 2 years of continuous work experience. Two years of experience does not need to correspond precisely to the type of work to be performed.

Example:


Deacon (1 Year) + Priest (1 year) = 2 Years Exp. for Minister Category



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Visa Bulletin Issues

- There is currently a backlog for ALL religious workers from Guatemala, Honduras, El Salvador, Mexico, and India.
- Monthly Visa Bulletin per DOS:
<https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>
- Adjustment of Status Filing Charts per USCIS:
<https://www.uscis.gov/visabulletininfo>
- EB-4 Categories for Religious
 - SR = Non-Minister Religious Workers
 - SD = Ministers



Non-Minister Permanent Residence Program


- Includes religious brothers and sisters (religious vocations) and other non-minister religious positions (religious occupations)
- Renewed in April through **09/30/2018**. Will expire unless it is renewed by Congress. (Packaged with federal budget review.)
- Typically, it has been renewed, causing no interruptions or delays. However, the sunset has also been allowed to expire in the past with the renewal not occurring until several months later. If that occurs, pending cases will be delayed and put on hold until the program is renewed.
- **DOES NOT affect the R-1 Nonimmigrant Religious Worker program or the minister program for permanent residence.**



MUST MAINTAIN STATUS

IMPORTANT:

- Individual must continue to maintain R-1 status throughout the PR Process. Filing the I-360 Petition does not give lawful status in the U.S.
- The current processing time for an I-360 petition is 8-10 MONTHS. Over a year for the full permanent residence process.



Traveling While I-360 is Pending...

- Consider travel plans before starting permanent residency process!!!
- Changes in the fall of 2016 make it inadvisable to apply for an R-1 visa with a pending or approved I-360 petition. Can travel with valid I-129 and R-1 Visa.



Traveling While I-485 is Pending

FN **MUST** have travel permit (Advance Parole) from USCIS before taking a trip abroad.

- OR

FN **ABANDONS** I-485 application!



Reminders for Green Card Holders

- Permanent Residency ≠ Citizenship
- Special Immigrant Religious Workers can apply for citizenship 5 years after they receive PR status.
- Permanent resident status never expires but the physical green card does. (Valid for 10 years.)
- Permanent Residence can be revoked.
- Long trips abroad can affect PR status. (Reentry Permit may be required to maintain status.)





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QUESTIONS???

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