




CATHOLIC LEGAL IMMIGRATION NETWORK, INC.
www.cliniclegal.org

NCDVD 2019

Introduction to Religious Worker Immigration Law

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WHO WE ARE

CATHOLIC LEGAL IMMIGRATION NETWORK, INC. (CLINIC) is one of the nation's largest support services programs providing assistance and legal training to community based immigration programs across the U.S.

RELIGIOUS IMMIGRATION SERVICES (RIS) is one of the few groups in the United States specializing in religious immigration law. These experienced legal professionals work closely with religious organizations who wish to bring international religious workers to the U.S.

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Today's Topics

- Immigration Law Basics
- F-1 – Students
- R-1 – Religious Workers
- Big Issues in “Religious Worker” Immigration Law
- Q & A



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Immigration Law Basics



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“Alphabet Soup”

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

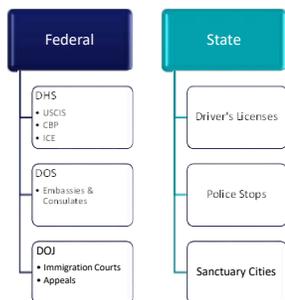


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Common Acronyms & Terminology

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

Immigration Law Complexity



Federal Litigation

- Travel Ban
- DACA
- Asylum
- Family Detention
- Family Separation
- Border Issues
- TPS
- DHS Funding





USCIS

ICE

CBP

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Typical Agency Interaction

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

DOS → CBP

For R-1 Visa

USCIS → DOS → CBP

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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, (Visa Application Form DS-160).

Note: Canadians are Visa Exempt.



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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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Visa Application 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)
- SECURITY QUESTIONS
- New – Social Media Questions

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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.)

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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.



Visa Process Updates

- Extreme Vetting – pursuant Executive Orders and policy changes.
- Visa Denials on the Rise – e.g. R-1 Visa Applicants from Colombia, Vietnam, India.
- Visa Issuance Delays – getting appointments and adjudication of visa applications.

What is 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](#).
- An I-94 shows LEGAL STATUS in the U.S.

I-129 Approval Notice with I-94 Card

Sample Approval Notice

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<h3><u>Status</u></h3> <ul style="list-style-type: none"> • Legal category admitted by CBP. • Dictates the purpose of this visit. • Dictates what is permissible and prohibited. • Dictates the duration of the visit. • May be able to change status inside US. 	<p>vs.</p>	<h3><u>Visa</u></h3> <ul style="list-style-type: none"> • Issued by a U.S. embassy or consulate abroad (DOS). • Stamp/sticker laminated into the passport. • Can expire while in the U.S.
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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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Some Tips...

- Keep track of expiration dates of passports, visas, I-94 records.
- Keep up to date on foreign travel and return travel to the U.S. (before trip is made).
- A visa and I-94 record may have different expiration dates.

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Any Questions So Far?



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Visa Options for Religious

- B-1/B-2 Tourist Visa
- F-1 Student Visa
- R-1 Religious Worker Visa



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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.



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What visitors CAN do:

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



What visitors SHOULD NOT 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.



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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.

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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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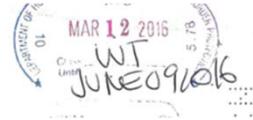
Extending Visitor Status

- 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.



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.



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

VWP Eligible Countries

- | | |
|--|---|
| <ul style="list-style-type: none"> • Andorra • Australia • Austria • Belgium • Brunei • Chile • Czech Republic • Denmark • Estonia • Finland • France • Germany • Greece • Hungary • Iceland • Ireland • Italy • Japan • Latvia | <ul style="list-style-type: none"> • 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 (\$14 fee)
- 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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Some Tips...

- Be careful of the “appearance of employment” (USCIS may conclude actual employment).
- If a religious worker already knows he is coming to the U.S. to work, he should not use an existing B-1/B-2 visa just because it is more convenient.
- Current immigration environment more strict than in recent history, be very cautious.



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F-1 Student

- 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.



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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. [DSO will issue updated I-20 form.](#)
- Allows student to work for up to 12 months following graduation.
- Noted on I-20.
- Must file EAD application 3 months before graduation and [within 30 days of getting updated I-20 form.](#)
- **Will not get full 12 months post-grad if use OPT during school. Other types of work authorization during school can also affect eligibility.
- [Confirm with DSO any other reporting requirements \(SEVIS\).](#)

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>

Accrual of Unlawful Presence

- Prior to August 9, 2018, a person in F-1 status who abandoned school, and/or overstayed in the U.S. and/or worked without authorization in the U.S. would likely be found to have violated his status (out of status) BUT because his I-94 record showed "D/S" they technically did not accrue unlawful presence.



Unlawful Presence Policy Memo

- If a student violated their status prior to August 9, 2018, then they would have begun accruing unlawful presence effective on August 9, 2018.
- Individuals who have accrued more than 180 days of unlawful presence during a single stay, and then depart, may be subject to 3-year or 10-year bars to admission, depending on how much unlawful presence they accrued before they departed the United States.



Update – Judge Blocks Policy

- On [May 3, 2019](#), a federal judge issued a nationwide preliminary injunction to temporarily block implementation of this policy. (Guilford College v. Nielson)
- U.S. District Court Judge said the implementation would cause "irreparable harm" for colleges, students and teachers.
- The judge said that the plaintiffs appeared likely to succeed both on a claim that the memo violated federal regulatory law and a claim that it conflicted with federal immigration law.



Some Tips...

- Get to know your DSO!
- Keep up to date on foreign travel and return travel to the U.S. (before trip is made).
- A working student may also need TAX advise/guidance (may become important for future immigration benefits).

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Questions?



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R-1 Religious Worker

- 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 (2.5+2.5=5 years total).
- Must fit into one of three (3) categories:
 - Minister
 - Religious Vocation
 - Religious Occupation

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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.



Religious Occupation

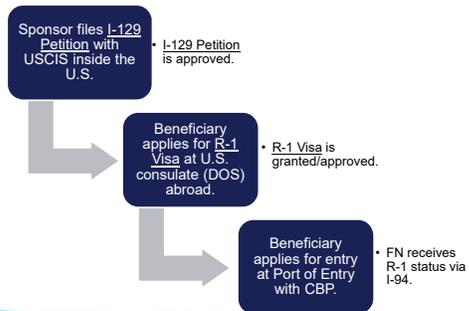
- What is an Occupation? *But remember...*
 - Primarily relates to traditional religious function
 - AND
 - Recognized as a religious occupation within the denomination
 - AND
 - Primarily related to, and clearly involves, carrying out the religious belief or creed of the denomination.
- Limited administrative duties allowed.
 - Clerks, maintenance workers and fundraisers are specifically excluded.
 - Does not include study or training, except if incidental to status.



R-1 Begins with I-129 Petition

- Form I-129 Petition for Nonimmigrant Worker
- Petitioner (Diocese) AND Beneficiary (Religious Worker)
- Several uses: to apply for an R-1 Visa; to change status to R-1; to extend R-1 status; and to change employers.

Overview of R-1 Process



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 \$1410
 - Only available for religious organizations that have had successful USCIS pre-adjudication site inspection.



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/processTimesDisplay/init.do>

Maintaining Lawful Status

- | Terms of Stay | Period of Stay |
|--|---|
| <ul style="list-style-type: none"> • Abide by the terms of the visa. • Can only do what is permitted in status. • Compensation. | <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. |



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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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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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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"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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R-1 Visa 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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Preparing for a Site Visit

- 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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Best Practices for R-1 Compliance

- Follow the 14-day USCIS notification requirement.
- Assist beneficiary in maintaining legal status.
- Timely file extensions of status.
- File appropriate change of employer petition if hiring new foreign born religious worker already working in the U.S.
- Do not employ religious workers without proper work authorization.
- No secular work (unless religious vocation).



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Some Tips...

- Keep up to date on foreign travel and return travel to the U.S. (before trip is made).
- Keep copies of current immigration documents (passport, visas, I-94s, approval notices, etc.). Review for errors and expiration dates.
- Make sure compensation records are current and accurate (for site visit and future petitions/applications).
- Abide by employment terms outlined in petition.
- New residential address needs Form AR-11.



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Questions About the R-1?

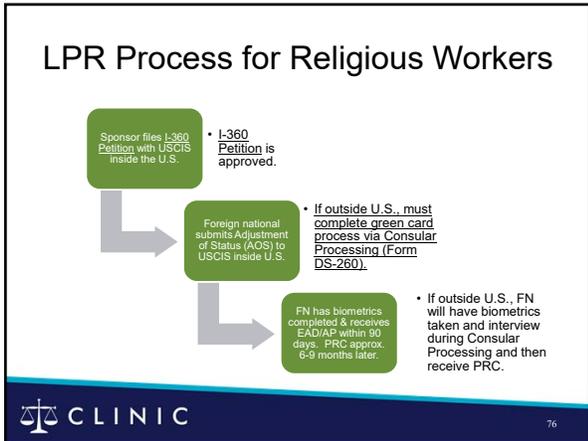


What about religious worker PERMANENT RESIDENCE?



Good News!

- Permanent residence **process very similar to R-1 process.**
- I-360 Special Immigrant Petition
+
I-485 Adjustment of Status Application (filed after I-360 is approved)
= Permanent Residence Card



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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Some Reminders...

- Permanent Residency ≠ U.S. Citizenship
- Special Immigrant Religious Workers can apply for U.S. 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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Some Tips...

- Consider starting the permanent residence process early – longer processing delays.
- Communicate policy to FN (when or if he is a candidate for permanent residence).
- The Diocese must intend to employ the FN permanently and FN must intend to reside permanently in the U.S.

Big Issues in “Religious Worker” Immigration Law



Visa Bulletin Issues

- As of the [September 2019](#) Visa Bulletin the Special Immigrant category (religious workers) is **UNAVAILABLE**. This means USCIS will reject any I-485 applications from religious workers submitted in September 2019.
- Normally there is a backlog for ALL religious workers from [Guatemala](#), [Honduras](#), [El Salvador](#), and Mexico.
- We do expect the category to become AVAILABLE (CURRENT) beginning in [October 1, 2019](#) (except for 3 the countries highlighted above).

Sunset of the Non-Minister Permanent Residence Program

- Includes religious brothers and sisters (religious vocations) and other non-minister religious positions (religious occupations)
- Renewed until **09/30/2019**. 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.**



USCIS Processing Delays




Historical National Average Processing Time for All USCIS Offices

The following table shows the national average processing times for select forms based on all USCIS Offices for Fiscal Years 2014 through 2018. A fiscal year runs from December through September of the following year. The data from 2019 runs up to January 31st, 2019 and will update monthly. These processing times are based on the age of the workload that USCIS has awaiting adjudication (pending cases) and combines data from all of the USCIS offices.

Processing Times (in Months)							
Form	Title	Classification or Basis for Filing	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019 Up to January 31st, 2019
I-360	Petition for American, Widow(er), or Special Immigrant	Immigrant Petition (All Classifications)	4.7	4.8	8.8	13.5	16.9
I-485	Application to Register Permanent Residence or to Adjust Status	Based on grant of asylum more than 1 year ago	6.6	7.3	7.8	8.9	8.3
I-485	Application to Register Permanent Residence or to Adjust Status	Based on refugee admission more than 1 year ago	5.6	6.2	6.5	7	8.4
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	6.5	6.8	8.1	11	12.2
I-485	Application to Register Permanent Residence or to Adjust Status	Family-based adjustment applications	6.6	6.8	8.4	11.1	12
I-485	Application to Register Permanent Residence or to Adjust Status	All Other Adjustment of Status	6.8	7.5	8	11.5	12.3



PROCESSING TIME DELAYS

- I-129 Petition (CSC)
 - 5-7 months
- I-360 Petition (CSC)
 - 5.5–7.5 months
- I-485 Application (TSC)
 - 10-24 months



I-360 Processing Time Delays

Issue: FN's status is maxing out or there is an upcoming Sunset/Visa Retrogression.

USCIS may expedite a petition or application if it meets one or more of the following criteria (*the criteria was recently revised in USCIS policy manual*)

- Severe financial loss to company or person (*provided that the need for urgent action is not the result of the petitioner's or applicant's failure*)
- ~~Emergency situation (deleted)~~
- Urgent Humanitarian reasons;
- ~~Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States (deleted)~~
- Clear USCIS error; or
- Compelling interest of US government.

New Policy Memos and Changes

- Notice to appear (NTA) policy memo (June 2018)
- RFE/NOID memo (July 2018)
- F-1 student unlawful presence memo (August 2018)



New/Updated Regulations

- Public Charge Regulation – Aug. 14, 2019
- Effective **Oct. 15, 2019**
- Impact on religious?



Other Issues

- DACA - On June 28, 2019, the U.S. Supreme Court agreed to review these legal challenges. The Supreme Court will likely hear oral argument on the cases in the fall or winter of 2019. **A decision is expected no later than June 2020. DACA recipients who currently have or previously had DACA can continue to submit applications to renew their DACA.**

Other Issues

- TPS – Most countries set to expire in 2020 (auto-extensions).
- El Salvador, Honduras, Nicaragua TPS will expire on Jan. 2, 2020.
- Litigation pending.

Some Tips...

- Cases taking longer AND case preparation is taking longer too (drain on resources).
- Careful case preparation and attention to detail more important than ever (smallest mistake can have big consequences).
- You may need experienced immigration assistance to manage properly (skilled legal counsel to keep up with fast changing environment).

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Q & A



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**CATHOLIC LEGAL
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