

SPECIAL IMMIGRANT RELIGIOUS WORKER EXTENSION
SIGNED INTO LAW BUT NOT YET EFFECTIVE



by

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On October 10, 2008, President Bush signed into law legislation that will extend the Special Immigrant Religious Worker program for non-ministers from October 1, 2008 to March 6, 2009. According to the new law, the extension will not be effective until such time as the Department of Homeland Security publishes the new regulations pertaining to special immigrant and nonimmigrant religious worker visa classifications. The law requires the Department of Homeland Security to publish these new regulations within thirty (30) days of the date the law went into effect (October 10, 2008). As a result, we hope that by November 10, 2008, the special immigrant religious worker for non-ministers will again be back in effect. Until the new religious worker regulations are published, USCIS will not process I-360 Petitions or I-485 applications based on approved I-360 Petitions for non-ministers in the religious worker category. Processing of I-360 Petitions and I-485 applications for ordained ministers is continuing and is not impacted or affected by this new law.

On April 25, 2007, the department of Homeland Security published proposed regulations which would modify or amend the current regulations for both the special immigrant (“green card”) and nonimmigrant (R-1) religious worker visa classifications. Over the last 18 months, USCIS has received public comments on the proposed regulations. Final regulations are expected to be published soon (no later than 30 days after October 10, 2008). To review the proposed regulations, [click here](#).

The proposed regulations are expected to include a number of major changes to the religious worker program, including:

- **Petition Required for R-1 Cases:** Currently, foreign nationals seeking an R-1 visa at a Consulate outside the United States can apply directly at the Consulate for the R-1 visa. No prior R-1 petition is required to be filed at this time. Under the proposed regulations, a Form I-129 Petition must be filed in the United States and approved by USCIS before the foreign national can apply for an R-1 Visa outside the United States. This proposed change is designed to allow USCIS to review information on the Petitioner in order to determine its eligibility and legitimacy. This will cause a significant delay for those religious workers seeking an R-1 visa abroad. In the past, an R-1 visa could be obtained in a matter of days or weeks. Once the new regulations are passed, an R-1 petition will have to be

filed and approved by USCIS which can lead to a delay of several months or even years since each petition that is filed must have an on-site fraud inspection by a USCIS officer before the R-1 petition can be approved. The days of getting a visa in a matter of days or weeks appears to be coming to an end!

- **Petitioner Attestations:** Petitioner organizations will be required to sign additional attestations on a review Form I-129 and a revised Form I-360 confirming or verifying the worker's qualifications, the job offered and the legitimacy of the petitioning organization.
- **New Form I-129 and Form I-360:** Both the Form I-129 (for R-1 cases) and Form I-360 (for special immigrant / green card cases) are expected to be revised.
- **Current Evidence of 501(c)(3) Tax-Exempt Status:** The Petitioner will be required to provide current evidence from the Internal Revenue Service (IRS) that it is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.
- **Limits on Initial R-1 Period of Stay:** Currently, R-1 status can be granted for an initial period of 3 years, with the possibility of a 2-year extension. The new R-1 regulations are expected to reduce the initial period from 3 years to only 1 year. Two additional extensions of 2 years each will be possible. By limiting the initial period to only one year, USCIS will be able at the time of the extension request to make sure that the activities described in the R-1 petition are actually being performed.
- **New Definitions and Requirements:** The new regulations are expected to include a number of revised definitions, including a revised definition for "Minister". A "minister" will be required to prove that he or she is "fully trained according to the denomination's standards. Under the current regulations, USCIS will typically accept a Certificate of Ordination or similar proof that the minister is ordained. The proposed regulation will require, in addition to such proof or ordination, that the minister is fully trained according to the denomination's standards.

USCIS has announced that, once these new regulations go into effect, USCIS will issue Requests for Evidence (RFEs) in order to obtain the new information required by the new regulations for cases that were filed under the old regulations. Therefore, petitioners and foreign nationals with pending R-1 or I-360 cases should expect a Request for Evidence once these new regulations go into effect!

The bottom line is that the religious worker program is expected to change significantly with the publication of the new R-1 regulations. We, at Long, Chang & Associates, are following the situation closely and will publish a notice on our website (www.longchangoonline.com) as soon as the new regulations go into effect. Once these new regulations go into effect, we can expect I-360 petitions for non-ministers and I-485

applications for non-ministers and their family members to resume processing until at least March 6, 2009 (when the extension signed on October 10, 2008 is again set to expire for non-ministers). Of course, our attorneys will monitor this situation and provide updates on our website (www.longchangoonline.com) as we get closer to that new expiration date.

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