

# OUR PRACTICE

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## Religious

**U.S. immigration law provides numerous options for temporary stays and permanent residence for purposes of religious activity.**

### Temporary Options

The R-1 classification specifically benefits religious workers and ministers, but other temporary options still exist.

### B Visitors

Many people already possess a U.S. visitor's visa (B-1 and/or B-2) or are not required to obtain a visa for visits with activities that would be acceptable in B-1 or B-2 status. Those persons may find it convenient to enter as visitors rather than go to the trouble of obtaining a new R-1 visa. Persons already visiting the U.S. also may prefer to avoid changing to R-1. Thus, the range of allowable activities in the B classification should be explored first. However, someone seeking a B visa to engage in religious activities should disclose them on the visa application form and perhaps in supporting documents.

**B-2.** Activities of visitors for pleasure with religious purposes under the B-2 classification may include, among others not listed here, the following:

- To visit friends or relatives.
- For educational purposes other than formal class instructions or training.
- To attend educational, fraternal, religious, or scientific conventions or convocations.

**B-1.** The government's lists of acceptable B-1 activities for a business visitor still include:

- Ministers on 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.
- Ministers of religion temporarily exchanging pulpits with American counterparts, who will continue to be reimbursed by the foreign church and will draw no salary from the host church in the United States.
- Missionary workers, defined to be Members of religious denominations, whether ordained or not, entering the United States temporarily for the sole purpose of performing missionary work (which may include religious instruction, aid to the elderly or needy, proselytizing, etc., but not ordinary administrative work or ordinary labor for hire) on behalf of a denomination, so long as 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 U.S. sources other than an expense allowance or other reimbursement for expenses incidental to the temporary stay.
- Aliens participating in a voluntary service program benefiting U.S. local communities, who establish that they are members of and have a commitment to a particular recognized religious or nonprofit charitable (meaning assistance to the poor or the needy) organization, that no salary or remuneration will be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteers' stay in the United States, and that the program will not involve the selling of articles and/or the solicitation and acceptance of donations.

Obviously, the procedures and limitations applicable to the [visitor's status](#) must be observed.

## R-1 Religious Workers and Ministers

The R classification is specifically for workers performing a traditional religious function in a church or non-profit institution affiliated with a denomination.

**Eligibility.** The eligibility rules are designed to make sure the R-1 category is not abused by persons who suddenly become religious for visa purposes. The requirements include the following:

- **For the two years immediately preceding the petition, the alien has been a member of a religious denomination.**  
The alien must show that he was in fact a member in a particular church and that the church is part of a denomination.
- **The alien is to work in the U.S. as a minister, as a religious professional, or in a religious vocation or occupation.**  
The position must involve performance of a "traditionally religious function," which may encompass even liturgical workers, religious instructors, religious counselors, cantors, catechists, missionaries, religious translators or religious broadcasters. However, no matter how religious the institution, a business manager, clerk, maintenance worker, or janitor will not qualify for R-1. Nevertheless, someone in a "religious vocation," such as a monk or nun, could be engaged in duties that are not always particularly religious.
- **The alien is qualified for the type of qualifying work involved.**  
The more complex the duties (particularly for minister or professional), the more important is the showing of qualification. It is often important to show either that the alien is competent in English language to communicate with objects of ministry in the U.S. or that the objects of ministry speak the alien's language(s).
- **The U.S. work is for a bona fide non-profit organization that is part of the denomination (such as a church) or for a bona fide non-profit tax exempt religious charitable organization that is affiliated with the denomination.**  
The U.S. organization must present its own letter from IRS certifying its tax exemption as a religious organization or a group exemption (such as for the denomination itself) that includes the organization. An organization other than a religious organization (such as a school or service organization) must have an IRS letter and an attestation of affiliation from a religious organization in the denomination. The U.S. denomination must be the same as the denomination in which the alien has been a member for the preceding two years. In practice, this is interpreted with some flexibility, and even non-denominational churches in the same religion can be accepted.
- **The alien will be financially supported by the religious organization such that unauthorized work will not be needed for the alien or family.**  
This involves not only showing that the alien's pay will be sufficient but also that the organization has an income sufficient to pay the alien. "In kind" compensation, such as housing, can count. The absence of pay, despite other resources the alien may have, suggests that the work is in fact lay ministry rather than proper religious "work."

## Procedures

In November 2008 USCIS started to require employers of R-1 workers to file preliminary petitions with USCIS before applying for a visa or status, just like the H, L, O, P, and Q classifications. USCIS sends out an agent to conduct an on-site visit of each new R-1 employer.

An R-1 petition is granted for no more than 30 months, and any visa or status can be granted for no longer than the petition. With an extension of 30 months, for a total of five years, the worker cannot obtain further R-1 status without an intervening absence from the U.S. of one year. The R-1 alien's spouse and unmarried

children under age 21 may obtain R-2 visas and status valid for no longer than the principal alien but are not authorized to work.

### Other Temporary Classifications

In some instances, alternatives to the B or R classifications will be of interest, including [F-1 for foreign students](#), [H-1B for specialty occupations](#), [H-2B for temporary workers in short supply](#), [H-3 for trainees](#), [J-1 for exchange visitors](#), [L-1 for intra-company transferees](#), [O-1 for aliens of extraordinary ability](#), and [Q for cultural visitors](#).

### Permanent Residence

Religious workers and ministers may pursue permanent residence as "special immigrants" in the employment-based fourth preference. The alien's U.S. employer, or even the alien himself, files a petition to USCIS using Form I-360. Upon approval, the alien and dependents pursue either adjustment of status within the U.S. or an immigrant visa at a U.S. consulate. Congress has tended to authorize legislation for immigration of non-minister religious workers for several years at a time, and the present authorization "sunset" on October 1, 2012. A cap of 5,000 on the number of persons who can be made permanent residents as religious workers in a given federal fiscal year has rarely been reached and only when a "sunset" is approaching. The eligibility rules for immigrant religious workers and ministers parallels the R-1 rules discussed above, with the following exceptions:

- During the two years immediately preceding the petition, the alien must have been a member of the same denomination AND must have worked on full-time, paid basis as a religious worker (though not necessarily of the same type as the new job). If the work was done in the U.S., it must have been done in lawful status. Breaks in service during or preceding the two years before the petition, such as for study, sabbatical, or disability, have been considered with some flexibility.
- The religious organization must have an indefinite need for the alien's qualifying services and the ability to pay the alien for them.

Alternative options for permanent residence for persons affiliated with religious institutions, though usually unnecessary, might include first preference classification as aliens of [extraordinary ability](#), [outstanding professors and researchers](#), or [intra-company transferees](#) within a multinational organization; second preference exceptional ability or advanced degreed aliens whose immigration is in the [national interest](#), and second or third employment-based preference based on [labor certification](#). Cases involving religious institutions in [medicine](#) or [education](#) should be evaluated in light of options for those areas.

### Rule Changes Proposed

USCIS has proposed significant revisions to the regulations governing temporary and permanent religious worker paths. Most important changes would require and R-1 petition to USCIS even to get a visa abroad, tighten the proof concerning nonprofit religious status, and loosen some other requirements. Meanwhile, USCIS has begun to perform on-site visits to religious visa employers before approving petitions.

### How We Can Help

Baker Donelson's Immigration Group has special expertise in immigration of religious workers. The Chair of our Group has written definitive legal articles on religion in immigration law and participated in writing the pending proposed regulations. We represent some of the world's largest denominations in coordinating their transfers of ministers, professors, and religious workers. We work with churches and other denominational affiliates to gather information, prepare packages, and present cases to consulates and the USCIS for temporary status and permanent residence. We know obscure rules about preserving permanent residence and citizenship eligibility when a minister and family members are placed on a foreign assignment, even for a substantial period. We convince government officials that an R-1 religious worker can pursue permanent

residence while maintaining and extending R-1 status. We counsel ministers and religious workers in a host of immigration questions and problems that inevitably arise.

### **Important Links**

- [DOS: Temporary Religious Workers](#)
- [DHS Notice Reopening Comment Period on Religious Workers Rule](#)
- [USCIS Religious Worker Benefit Fraud Assessment Summary](#)