

Guidelines for Adjudicating R-1 Nonimmigrant Visas

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SUBJECT: GUIDELINES FOR ADJUDICATING "R-1" (RELIGIOUS WORKER) NONIMMIGRANT VISAS

1. SUMMARY: Guidance is provided to assist posts in the adjudication of R-1 visas, specifically addressing the following areas of potential confusion;

---Unlike the special immigrant religious worker category, the R-1 nonimmigrant religious worker category does not require a petition and the R-1 applicant need not have any previous experience as a religious worker.

---A religious "vocation" is based on a lifelong commitment as practiced in the religious denomination, and an alien having a religious vocation can qualify for R-1 status regardless of the nature of the alien's planned activity in the U.S. A religious

“occupation” is habitual engagement in a qualifying traditional religious activity, and the alien’s activity must therefore be inherently religious in nature to qualify for R-1 treatment.

---There is no “residence abroad” requirement for R applicants, and an R-1 application cannot be refused under 214(b) based on absence of adequate ties abroad. However, R applicants should be refused under 214(b) if they fail to establish eligibility for R-1 classification.

--B-1 or B-2 visas may be issued for some religious activities that either do not involve work or that fall within 9 FAM 40.31 N6.1.

END SUMMARY.

NONIMMIGRANT VS. IMMIGRANT CLASSIFICATION

2. Many of the definitions and requirements for both the “R-1” nonimmigrant visa and the “SD1” and “SR1” special immigrant religious worker visas are similar. However, there are important differences (other than the obvious difference that one is a nonimmigrant and the other is an immigrant visa), briefly, the most important distinctions are:

---The SD1 and SR1 categories require a petition approved by the INS. R-1 visas, however, do not require petitions.

--While both the immigrant and nonimmigrant religious worker classifications require membership in a bona fide non-profit religious denomination for a period of at least two years immediately prior to the application, an applicant for an immigrant religious worker visa must also have been engaged in qualifying ministerial, vocational, or occupational activities in addition to membership during that time. An applicant for an R-1 nonimmigrant visa, however, need not have been engaged in additional activities beyond membership, and there is no requirement that an R-1 applicant have previous experience as a religious worker.

PETITIONS AND NOTICES OF APPROVAL

3. 9 FAM 41.58 N3 and N12 state that no petition, labor certification, or other prior approval is required in R-1 cases and Congress has charged consular officers with the responsibility and authority to determine whether aliens meet the qualifications for R visa issuance. Since R-1 visas do not require approved INS petitions, a consular officer should not condition issuance of an R-1 visa on either INS approval of a petition or presentation of an I-797 approval notice from the INS.

4. If petitions are not required in R-1 cases, why do some applicants present approval notices from the INS?

--Aliens in the U.S. who seek to extend R-1 status or to change status to R-1 are required by INS to have an I-129 (petition for a nonimmigrant worker—the same form used for H-1B workers) filed on their behalf, and they receive an I-797 (notice of approval) when the extension of stay (EOS) or change of status (COS) is approved.

5. When an EOS or COS-approved alien later goes abroad to apply for an R-1 visa, he/she may present the I-797 to the CONOFF, erroneously thinking that the approval of the I-129 is akin to an approved temporary worker petition in cases requiring a petition (e.g., H, L, etc.). Unlike an H or L petition approval, however, the I-797 for an R-1 alien relates only to the prior change of status or extension of stay and does not govern the later visa application, which the CONOFF must review and adjudicate de novo on its own merits. While a prior INS petition approval is not binding on a CONOFF, it should be given some consideration, particularly if the applicant’s duties have remained unchanged since the COS or EOS was approved.

6. If the applicant meets the criteria for classification, the CONOFF can issue an R-1 visa, whether INS previously approved an I-129 or not. On the other hand, if the alien does not meet the criteria for R-1 classification, the CONOFF must refuse the application, even if the INS had previously approved an R-1 petition for the alien in connection with a prior EOS or COS. In cases where the alien erroneously presents an I-797 and

post finds that the alien does not qualify for R-1 status, the case is not to be returned to INS (unlike an H-1B or L-1 case).

RELIGIOUS "VOCATION" VS. RELIGIOUS "OCCUPATION"

7. If an alien is seeking R-1 classification based on his or her religious "vocation", this must be evidenced by the demonstration of a lifelong commitment as practiced in the religious denomination, such as the taking of vows. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters (9 FAM 41.58 N9.2-3). As 9 FAM 41-58 N9.4 states: "an alien who has taken vows or the equivalent and has made a lifelong commitment to a religion is presumed to be engaging in activities relating to a traditional religious function regardless of the nature of activity to be performed. Persons with religious vocations may engage in any type of activity within their denomination or its affiliate, and the absolute exclusion of janitors, maintenance workers, clerks, etc. from the definition of 'religious occupation' does not apply to religious vocations." For vocation-based R-1 applicants, the emphasis is therefore on what the applicant's status is within the religious organization, rather than on what the applicant will do in the U.S.

8. If the alien does not qualify as a minister of religion and CONOFF determines that the alien does not have any other religious vocation, the applicant would not qualify for an R-1 unless he/she is coming to the U.S. to work in a religious "occupation". Aliens seeking R-1 classification based on their intent to take up a religious occupation must demonstrate that the proposed position is a habitual engagement in an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors or counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters (9 FAM 41.58 N9.2.2). The duties must be predominantly religious in nature for the alien to qualify as having a religious occupation. For occupation-based R-1 applicants, the emphasis is thus on what the applicant will do in the U.S. rather than on what the applicant's status is.

9. In cases involving a claimed religious occupation, the post should focus on the exact duties of the position the alien intends to take up in the U.S. Whether the duties relate to traditional religious functions should be determined in the context of the particular religious organization. For example, while meat processing is normally a secular function, insuring that meat is processed consistent with kosher or halal rules could be considered a religious function. The fact that the alien may not be engaged in a religious occupation at the time of visa application is not a bar to issuance, as there is no requirement that an R-1 applicant have any prior experience as a religious worker. While previous work experience is not required, it is relevant to determining whether the alien truly intends to take up the described religious occupation.

214 (B) ? -- OR NOT 214 (B) ?

10. Refusal of an R-1 application under 214 (b) is appropriate when an applicant fails to establish eligibility for R-1 classification. Thus, if post finds that the applicant does not have a religious vocation and is not destined for a position that meets the definition of religious occupation, then the proper refusal ground is 214 (b). Therefore, post's focus in regard 214 (b) should be on whether the applicant qualifies for status, rather than on whether the applicant intends to return to a residence outside the U.S. upon completion of stay in the U.S.

11. Under INA 101 (a) (15) (r), applicants for R visas are not required to maintain a residence abroad which they do not intend to abandon (9 FAM 41.58 N2), nor are they required to demonstrate "nonimmigrant intent." Therefore, an alien applying for an R visa cannot be refused under 214 (b) on the ground that he/she lacks "compelling ties", nor would an intent to adjust status to immigrant sometime in the future be a proper basis for a 214 (b) finding if post is satisfied that the applicant intends to comply with all the requirements for maintaining R status. As noted in 9 FAM 41.58 N2, because R applicants are exempt from the residence abroad requirement, the alien's stated intention to depart the U.S. when his/her status ends is normally sufficient to satisfy the requirements of 214 (b), absent specific evidence that the alien's intent is to the contrary. Thus, R-1 applicants are held to the same lenient standard of 214 (b) also applied to E-1 and E-2 NIV applicants.

B VISAS FOR RELIGIOUS ACTIVITY

12. Posts should keep in mind that certain religious work can be undertaken in B status, under 9 FAM 41.31 N6.1. In addition, other religious activities (e.g., private worship, prayer, meditation, informal (avocational) religious study, and attendance at religious services or conferences) which do not constitute religious “work” (and therefore would not be appropriate for R classification unless the alien has a religious vocation) nonetheless may qualify for B-1 or B-2 visa classification. Other than in the narrow contexts listed in 9 FAM 41.31 N6.1, religious workers cannot work on a B visa, and if the alien will be paid a salary from a U.S. source, B-1 classification should not be used, and the alien must qualify for R-1 or some other work visa. The “residence abroad” requirement of 214 (b) must be met as to any alien seeking to undertake religious activities on a B visa.

WHEN TO SEEK AN ADVISORY OPINION

13. It is the duty of the consular officer to determine whether individual applicants qualify for R visas, as the principal issues necessary to resolve R visa eligibility (e.g., two-year membership in the denomination; whether the alien has a religious vocation or occupation) are factual in nature, the eligibility determination is necessarily one for the consular officer to make, and an

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Advisory opinion would not normally be necessary unless the officer had a particular legal question in a particular case. That said, if a post needs guidance in a particular case, VO welcomes queries. A consular officer who has unresolved questions regarding the applicability of R classification to an applicant’s proposed position, or the qualifications of the alien or the religious denomination, should submit a request for an advisory opinion to the department, attention CA/VO/L/A.

14. Minimize considered
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