

February 25, 2026

Business and Foreign Workers Division  
USCIS Office of Policy & Strategy  
5900 Capital Gateway Drive  
Camp Springs, MD 20746

*Submitted via:* <https://www.regulations.gov/>

RE: Comments on Improving Continuity for Religious Organizations and Their Employees, 8 CFR Part 214 (DHS Docket No. USCIS-2025-0403)

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) welcomes the above referenced Interim Final Rule (IFR) for reducing time abroad for religious workers and request for comments published by the Department of Homeland Security (DHS) on January 16, 2026. We offer several modifications and that we believe would offer beneficial clarification for practitioners and religious workers.

AILA is a voluntary bar association of over 18,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advance of law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. Citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws, including religious workers and religious organizations. Our expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government.

### **I. The IFR Will Benefit Religious Organizations and the Communities They Serve**

AILA welcomes this IFR which reduces the period of time religious workers must remain outside the United States after exhausting the five-year limit in R-1 nonimmigrant status in order for them to become eligible for a subsequent period of R-1 status. Reducing the amount of time from one year to a brief departure will significantly assist religious organizations in retaining the majority of their religious workers beyond five years, with only a brief visit abroad. This change will provide continuity and stability to their workforce that had been facing disruptions triggered by the prior rule.<sup>1</sup> We appreciate that DHS recognizes that religious workers are essential to strengthening families and revitalizing communities at large

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<sup>1</sup> 88 Fed.Reg.18252 (Mar. 28, 2023) 18,252.

## **II. The IFR Requires Clarification on When the Five-Year Clock Restarts for R-1 Nonimmigrant Status**

The IFR removes the need for a religious worker to remain abroad for one year *when* the religious worker reaches the five-year limit in R-1 status. The IFR, however, is not clear as to whether the religious worker must first have accrued five years of R-1 nonimmigrant status in the United States in the aggregate before a departure of any period of time would qualify the individual for another period of five-years of R-1 status. Beyond semantics, clarification is necessary to ensure that the purpose of the IFR is fulfilled.

The IFR's stated purpose is to "enhance stability and significantly reduce disruptions for U.S. religious organizations and their employees."<sup>2</sup> Applying a very rigid rule to restarting the five-year clock can be costly and disruptive to a religious organization's functions. For instance, if the R-1 is the beneficiary of two consecutive R-1 petition approvals for 30 months each, but their initial R-1 entry was after the initial approval date of the first R-1 petition, the R-1 will have time remaining after the second petition expires. Based upon the IFR language, the organization first must file a third R-1 petition to recapture the remaining time before filing a fourth R-1 petition to restart the clock. This is costly when considering the R-1 nonimmigrant only has a few weeks or months remaining for their R-1 status. Thus, an organization would be required to pay for only a few months and then pay again to restart the clock.

Additionally, having the R-1 individual wait until the five-year period of stay has first been reached before departing to seek a new period of five years could conflict with periods of time when the religious organization needs the individual the most. For example, different faiths have different periods of time when the religious worker is essential, such as Lent, Ramadan, Passover, and Easter. Being required to leave after reaching their five-year limit, even for a short time, during such periods could cause unnecessary disruption.

Given the above, AILA recommends that the Secretary consider allowing a reset of the five-year maximum under any of the following conditions: (1) if a religious worker changes employers, (2) if the religious worker remains with the same employer and departs the United States after having completed the initial 30-months of R-1 status, (3) there are 6 months or a year remaining on the five year clock, (4) or any time a religious worker departs the United States during the last year of the five-year maximum period.

## **III. Issues with 214(b) While Consular Processing May Arise Without Communication with the Department of State**

In the IFR, DHS states that one of the primary reasons for reducing time abroad is the impact of long waits for immigrant visas caused by demand in the fourth employment-based preference category (EB-4).<sup>3</sup> Specifically, in describing the purpose of the IFR, DHS emphasized its aim "is

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<sup>2</sup> 91 Fed. Reg. 2049 (Jan. 16, 2026)

<sup>3</sup> 91 Fed. Reg. 2049, 2050 (Jan. 17, 2026).

intended to significantly reduce disruptions for R-1 nonimmigrants and U.S. employers who want to retain R-1 nonimmigrant works ... also intended to specifically provide relief for those religious workers who have been awaiting an immigrant visa under the EB-4 category because the change will permit them to return as a temporary R-1 nonimmigrant without having to reside abroad and be physically present outside the United States for a year, and to continue to pursue the permanent immigration status in the United States once the worker's EB-4 priority date becomes current." DHS recognizes that R-1 individuals could also be beneficiaries of filed or approved Form I-360 immigrant petitions, and this does not disqualify such individuals from leaving the United States and reentering for additional periods of R-1 status.

While AILA appreciates the positive changes in this IFR, we recommend DHS communicate and collaborate with the Department of State (DOS) to ensure that the purpose of the IFR is effectuated. In particular, we recommend that DOS include language in the Foreign Affairs Manual (FAM) that would allow the issuance of R-1 visas to individuals assuming that they meet all of the regulatory requirements for such visa, notwithstanding the fact that they are beneficiaries of approved immigrant petitions, e.g. Forms I-130, I-140, and I-360.

AILA members and their clients have reported DOS denying R-1 visas based on 214(b) nonimmigrant concerns. Reports of these denials include individuals who are not beneficiaries of immigrant petitions yet but fail to demonstrate ties abroad, as they might not have property or assets abroad due to a vow of poverty, moving frequently as part of a vow of obedience, or belonging to a missionary religious order. It is possible that these denials are given by consular officers who are not familiar with religious workers and the quasi-dual intent nature of the R-1 nonimmigrant visa as described in the USCIS regulations 8 CFR 214.2(r)(15). Failure to collaborate with the DOS could impede the fulfillment of the purpose of the IFR if religious workers are not able to return to the United States after departure.

#### **IV. The IFR Should Similarly Reduce Time Abroad for R-2 Visa Holders**

While the IFR's purpose is to enhance stability and reduce disruptions, it does not specify how R-2 dependents are to seek additional time in R-2 status in the United States. In order to fully minimize disruption to the employees of the religious organizations, then by implication, the rule should apply to dependents. AILA highly encourages DHS to consider allowing R-2 dependents to request an extension of their R-2 status beyond the five-year limit without requiring departure from the United States. This approach would permit the R-2 spouse and children to remain in the U.S. with the R-1 nonimmigrant to affect departure from the U.S. and return without the unnecessary disruption and burden of requiring the entire family to travel abroad. Additionally, this would limit the cost to the R-1 nonimmigrant and family, as many religious workers live on a limited budget. We believe this recommendation is consistent with the treatment of other

nonimmigrant dependents, such as H-4 nonimmigrants whose period of stay is governed by the H-1B's period of stay regardless of the H-4's duration in the United States.<sup>4</sup>

## **V. Priority Dates Should be Preserved for Subsequently Filed Forms I-360**

While we are grateful that the IFR addresses a major burden caused by long waits for EB-4 immigrant visas, the lack of portability for the priority date of approved I-360: Special Immigrant Religious Worker Petitions is another burden to be addressed. Based on the current regulations, when the beneficiary of an approved I-360 wants to change positions, they must file a new I-360.<sup>5</sup> However, they cannot use the priority date from the first petition and, thus, face the prospect of waiting even longer before they are eligible for permanent residence.

According to the IFR, the current wait for a priority date to become current is at least two decades.<sup>6</sup> Realistically, many religious workers are not expected to remain in the same position for over 20 years, as many of their roles progress within their respective organizations. For example, a Youth Pastor may eventually want to move into a Senior Pastor position. However, if the Youth Pastor wants to preserve their priority date, they will need to stay in the position until their grandchildren are in the youth group. Additionally, should the religious organization cease operating, the religious worker will have to restart the immigrant visa process. AILA recommends amending 8 CFR 204.5(e) to permit EB-4 Special Immigrant Religious Workers to preserve the priority date of previously approved I-360 when filing a new I-360. This will afford EB-4 religious workers the same priority date retention benefit afforded those in EB-1, EB-2, and EB-3 immigrant visa categories.

## **VI. Conclusion**

Overall, AILA welcomes and appreciates this IFR and the positive impact it will have on a wide range of religious organizations. We believe that the agency's solution arising out of its consideration of how immigrant visa backlogs are negatively impacting an essential population is a valuable approach. In addition to the reduction in time abroad for R-1 nonimmigrants, AILA highly encourages the agency to consider making the above clarifications and modifications, as well as collaborating with other agencies to bring about holistic solutions.

Sincerely,

American Immigration Lawyers Association

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<sup>4</sup> 8 CFR 214.2(h)(9)(iv).

<sup>5</sup> 8 CFR 214.2(r)(7).

<sup>6</sup> 91 Fed. Reg. at 2053.