

COUNSEL

January 2011

A publication of Paschal Nwokocho Law Offices, LLC.

In this Issue...

- ◆ **Special Edition on Religious Workers Visas**
- ◆ **Religious Workers: Options for Religious Organizations and their workers**
- ◆ **Non-Immigrant Religious Worker "R" Visa**
- ◆ **Religious Worker—Special Immigrant Visa**
- ◆ **U.S. Citizenship**
- ◆ **Myths About Religious Worker Petitions**

About Counsel

A newsletter publication of Paschal Nwokocho Law Offices, LLC, Counsel is dedicated to the needs and interests of our clients and subscribers.

Each issue of Counsel explores specific areas of immigration law, which may be of personal or business interest to its readers.

Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.

Our Mission

At Paschal Nwokocho Law Offices, our mission is to provide the highest quality professional, client-driven legal services to businesses and individuals at reasonable rates.

We believe the Immigration and Nationality laws of the United States should work for our clients, *not* against them. And we employ all available tools to seek the best possible solutions on their behalf.

Why A Special Edition On Religious Workers?

At Paschal Nwokocho Law Offices, we have continued to process an increasing number of Religious Worker petitions all across the United States and overseas. Our institutional clients have included Churches, Religious Congregations, Hospitals, Mosques, Temples, etc. We have been called upon to counsel attorneys, in-house counsels, etc., on issues involving Religious Workers. Sometimes, we have been called upon to appeal or help correct mistakes caused by other counsels' inexperience with the issues of Religious Worker petitions. We consider ourselves quite privileged to fill this growing need in the United States.

As our clients' needs have grown, we deem it appropriate to dedicate this edition of our newsletter to issues affecting Religious Workers.

There have been a lot of changes to the Religious Worker regulations in the past few years. It is therefore important that applicants and counsel fully understand these evolving rules and what they mean for their cases.

Religious worker visas have been uniquely useful to missionaries who plant churches.

Religious Workers: Options for Religious Organizations and their workers

Religious organizations in the U.S. continue to witness an increase in immigrants they serve. Along with that is the severe shortage of qualified workers to serve the needs of the immigrants. It is to address this specialized need of religious organizations that Congress created the Religious Worker visa.

Moving to the United States permanently or temporarily is possible for a pastor, priest, nun,

monk, Imam, or religious professional including cantors, teachers, etc. The person can move to the U.S. permanently—as an immigrant, or temporarily— with a non-immigrant visa. The option one decides to take, and what is legally available to the person, depends on one’s circumstances and goals. We advise individual clients to secure the consent of their organizations before making a major decision.



Non-Immigrant Religious Worker “R” Visa: The United States immigration laws (8 U.S.C § 1101 (a)(15)(R), and the accompanying regulations) allow ministers and religious workers to come to the United States with the specific purpose of performing their religious duties. To be eligible for this status, the applicant has to meet the following requirements:

- The person has to be a minister or working in a professional capacity in a religious vocation or occupation;
- The person is working or will be working for a nonprofit religious organization or organization affiliated with the religious denomination; and
- The person has to have been a member of the religious denomination for at least 2 years before applying for the R-Non Immigrant visa or status.

When the United States government approves the petition, the religious worker, if overseas, can go to the United States consulate to get the visa to enter the U.S. For a worker already in the United States, they can start working for the petitioning organization.

The person will have up to five years to stay in the United States in this R-non-immigrant status. The

spouse and children of a person in R status are allowed to come in and stay in the United States as well. The law requires the minister or religious professional to work only with the organization that filed the application for him. Whenever the person terminates the relationship with the petitioning organization, a new petition needs to be filed with the Immigration Service for the person to remain in the U.S legally.



Religious Worker—Special Immigrant Visa:

The U.S Immigration law at 8 U.S.C §1101(a)(27)(C)(ii) and 8 C.F.R §204(m) have provisions to allow foreigners to gain Permanent Residency status (also known as a green card) in the United States if they meet certain qualifications. The petition is filed on a USCIS Form I-360. These qualifications relate to the person’s status as a religious worker or minister. To be eligible, the petitioning organization has to:

- sign an employer attestation about its status under the Internal Review Code;
- verify its need for the employee and the ability to sponsor/compensate the worker; and
- substantiate the worker’s qualification for the position.

Upon approval of the Form I-360, the worker can then file the Permanent Residency (Form I-485), Employment Authorization Document (Form I-765) and Advanced Travel Document (Form I-131) applications.



Religious Worker—Fraud Investigations:

Fraud Investigations, particularly site visits, have become codified into the new religious immigration regulations. All applications or

petitions filed on behalf of or by a religious worker, such as the Form I-129, Form I-360, and Form I-485, are now subject to on-site inspections, a/k/a ‘site visit.’

A site inspection or site visit involves a USCIS officer visiting the listed organization’s location, speaking with its employees and members of the organization, as well as requesting documentation, and/or touring the location.

Site inspections usually occur at random and without advanced notice. Other site inspections occur because a USCIS officer may suspect fraud.

Site visits can be an intimidating step in the process; however, a petitioning organization can prepare for a site visit by:

- Keeping good records;
- Assigning an individual to meet with the USCIS Officer and to answer any questions he/she may have; and
- Contact Counsel.



Process & Strategy:

In most cases, the Immigration Service will conduct a site inspection, discussed above, to verify the contents of the immigration petition.

The process for getting either the non-immigrant or immigrant status can be quite complicated and often involves strategies unique to each petition. A petition can take several months to approve, except in some circumstances where one can request for a decision within 15 business days. Thus, we advise organizations and individuals to seek the counsel of a professional who has extensive experience in the type of matter.

Citizenship in the United States.

A person who gets Permanent

Residency status based on the Religious Worker Special Immigrant status can stay in the United States for as long as the person wants, provided they comply with the laws of the country. The person can apply to become a United States citizen if they meet other citizenship requirements.

There are also unique provisions that allow a person whose spouse is a U.S citizen and engaged in the overseas ministry to gain U.S citizenship with minimal physical presence or residence in the U.S.



Myths About Religious Worker Petitions

Our office has handled more than 200 religious worker petitions, and has filed petitions in all the regions of the United States. The following are some of the myths we have identified from our years of consulting with organizations and individuals.

1. *You have to be residing in the United States on R-1 status before you can file for Special Immigrant visa.*

A qualified person, whether within or outside the U.S., can file a special immigrant visa petition.

2. *You can only file your green card application at the same time you file a special immigrant petition.*

You can file a green card application only after the Special Immigrant petition has been approved. For a period of time, in 2009 and 2010, the Immigration Service accepted concurrently filed petitions. However, the Federal Court, in late 2010, stopped that practice.

3. *You have to be a church or a 501(c) organization to file the Religious Worker petition.*

Any organization set up for religious purposes can file the petition, so long as they meet certain criteria.

4. *R-1 status and Special Immigrant Status for religious workers are the same.*

R –1 is a non-immigrant status and Special Immigrant leads to Permanent Residency status. See page 2 for a detail discussion of the distinction.

5. *You are guaranteed Permanent Residency status if you filed your Special Immigrant petition while you are in status.*

You have to be in status to be eligible to file but you also have to meet the specific requirements to be approved.

6. *My organization has to have so much money in the bank account before we can file the application for a new religious worker.*

The organization's ability to pay, not the amount in the bank account, is more important.

7. *Any lawyer can effectively and successfully file a religious worker petition.*

The complexity of the process and the various instructions from the Immigration Service means that applicants are better served by experienced professionals who are knowledgeable about the process and the law in this specialized area of religious worker petitions.



If you, your organization, or any one you know needs the services of a Religious Worker, or are intimidated about the process of getting the worker into the country or securing proper status for the Religious Worker, call our office for a consultation.



Did you know?..

- Claiming to be a United States citizen when you are not on the Form I-9 (usually completed when people start work) can result in harsh immigration consequences. In some circumstances, it can bar the person from ever getting any type of immigration benefits in the United States.
- INFOPASS: The Immigration Service now requires most people to have scheduled appointments before they can come to the immigration office to inquire about their case.

Reader's Corner

Readers are encouraged to send questions and comments to Counsel at Paschal Nwokocha Law Offices.

To subscribe to or unsubscribe from Counsel, or to receive copies of Counsel for your business, please send your request to:

**Paschal Nwokocha
Law Offices, LLC
105 5th Avenue South
Suite 550
Minneapolis, MN 55401**

Or call us: 612.465.0060

Visit us on the Web:

www.Paschal-Law.com

Disclaimer

Counsel does not constitute legal advice. Readers are urged to consult an attorney before acting on any information contained in this publication.

Recent Success Story

At Paschal Nwokocha Law Offices, we have consistently had positive results on most of the religious worker petitions that we file. Even when challenges arise, we have succeeded in getting the cases approved. Often the challenges arise from cases handled by other professionals that we are called upon to rectify.

For instance, we were recently retained by a major religious organization that filed a Special Immigrant petition for its minister. The Immigration Service denied the petition after sitting on it for more than 4 years, based on its conclusion the organization failed the site inspection. We were able to prepare and file Motions to reopen the denied applications. The Immigration Service reopened and promptly reversed the denials. At this point, we are waiting for a final approval of the Permanent Residency application.

If you need legal services relating to immigration or other legal issues and would like to schedule a consultation...

Call us for an appointment

612.465.0060

**Paschal Nwokocha
Law Offices, LLC**

105 5th Avenue South

Suite 550

Minneapolis, MN 55401

Visit us on the Web:

www.Paschal-Law.com

Paschal Nwokocha Law Offices, LLC

105 5th Avenue South

Suite 550

Minneapolis, MN 55401