

## **9 FAM 42.32(d)(1) NOTES EMPLOYMENT-BASED FOURTH PREFERENCE RELIGIOUS WORKERS**

*(CT:VISA-999; 09-03-2008)*

*(Office of Origin: CA/VO/L/R)*

### **9 FAM 42.32(d)(1) N1 DETERMINING SPECIAL IMMIGRANT STATUS**

*(CT:VISA-999; 09-03-2008)*

Applicants who would previously have been classified as special immigrants will still have to establish their eligibility for status under INA 101(a)(27)(C), but will no longer be so classified for visa purposes. They must also be the beneficiary of a petition according employment-based fourth preference classification. It should be noted that the sole criterion for approval of such a fourth preference petition is establishment of qualification as a special immigrant. The Related Statutory Provisions set forth the statutory description of qualifications for special immigrant status under INA *101(a)(27)(C)*.

### **9 FAM 42.32(d)(1) N2 POSSIBLE QUALIFICATION UNDER OTHER EMPLOYMENT-BASED CATEGORIES**

*(TL:VISA-54; 2-28-92)*

Inasmuch as special immigrants are now subject to numerical limitation, there is no reason applicants who might meet the description of a special immigrant (such as a religious worker), but are also able to qualify for classification in some other immigrant category, should not apply in whatever classification is most advantageous. There may also be aliens engaged in religious work who do not meet the criteria of INA 101(a)(27) and thus fourth preference but could possibly qualify for classification in some other category.

## **9 FAM 42.32(d)(1) N3 ALIEN MUST BE AUTHORIZED BY DENOMINATION WITH BONA FIDE ORGANIZATION IN UNITED STATES**

*(TL:VISA-680; 01-28-2005)*

The Department of Homeland Security (DHS) regulations require evidence of the bona fides in the United States of the employing organization in support of the petition, including proof of the denomination's tax exempt status. DHS may also require evidence of the organization's assets and methods of operations and the organization's papers of incorporation under applicable state law in appropriate cases. Approval of the petition will therefore constitute proof of the bona fides of the U.S. organization.

### **9 FAM 42.32(d)(1) N3.1 Determining Bona Fide Organization**

*(TL:VISA-680; 01-28-2005)*

DHS defines a religious denomination as having the following characteristics:

- (1) Some form of ecclesiastical government;
- (2) A recognized creed and form of worship;
- (3) A formal code of doctrine and discipline;
- (4) Religious services and ceremonies;
- (5) Established places of religious worship; and
- (6) Religious congregations; or
- (7) Comparable indicia of a bona fide religious denomination.

### **9 FAM 42.32(d)(1) N3.2 Salvation Army**

*(TL:VISA-11; 5-5-88)*

The Salvation Army is a religious denomination having an organization in the United States within the meaning of the INA 101(a)(27)(C). Its commissioned officers are ministers of a religious denomination within the meaning of that section.

## **9 FAM 42.32(d)(1) N3.3 Practitioners and Nurses of Christian Science Church**

*(TL:VISA-54; 2-28-92)*

Practitioners and nurses of the Christian Science Church (Church of Christ, Scientist) may properly be considered as ministers of religion under INA 101(a)(27)(C). Readers and lecturers do not qualify as ministers, but could qualify as an alien seeking to come in a religious vocation or occupation. The Christian Science Church is considered a religious denomination with an organization in the United States.

## **9 FAM 42.32(d)(1) N4 ALIEN'S SERVICES NEEDED BY RELIGIOUS DENOMINATION**

*(CT:VISA-999; 09-03-2008)*

Aliens applying for special immigrant status under INA 101(a)(27)(C) must demonstrate that their services are needed by a religious denomination in the United States. *The following factors are relevant to whether a bona fide need for such services exists:*

- (1) The number of ministers and staff currently serving the particular church (i.e., *has* the number diminished or increased?);
- (2) The size of the congregation (i.e., *has* the congregation significantly increased?);
- (3) The specific duties which the alien will be undertaking (i.e., *has* the church grown or diversified to the extent that additional staff is needed?);
- (4) Prior experience of the alien relating to the specific duties to be undertaken (i.e., *if* the petitioning church needs a youth minister, administrator, etc., does the alien have the required background?); and
- (5) Whether or not the church previously had the services of a minister or staff to perform the duties which the alien is to be undertaking, and if not, what circumstances have created a "need" for the alien's services (i.e., an increase in the size of the congregation or additional responsibilities placed upon the current minister or staff).

## **9 FAM 42.32(d)(1) N5 ALIEN ENTERING UNITED STATES SOLELY TO CARRY OUT MINISTERIAL VOCATION OR OTHER RELIGIOUS WORK**

*(TL:VISA-54; 2-28-92)*

Aliens seeking special immigrant classification under INA 101(a)(27)(C) must demonstrate that they will be entering the United States to perform duties associated with a religious occupation or vocation.

### **9 FAM 42.32(d)(1) N5.1 Ministers of Religion**

*(TL:VISA-54; 2-28-92)*

Ordination of ministers chiefly involves the investment of the individual with ministerial or sacerdotal functions, or the conferral of holy orders upon the individual. If the religion does not have formal ordination procedures, there must be other evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

### **9 FAM 42.32(d)(1) N5.2 Deacon May Qualify**

*(TL:VISA-54; 2-28-92)*

A deacon of any recognized religious sect or denomination may be considered to be a minister of religion within the meaning of INA 101(a)(27)(C) when the following conditions are present:

- (1) Ordination or equivalent form of authorization has taken place which distinguishes the clerics from the laity;
- (2) Ordination or equivalent form of authorization has conferred the power of leading a congregation and preaching;
- (3) Ordination or equivalent form of authorization has conferred the power to administer the sacraments, baptism, and communion or their equivalents; and
- (4) Ordination or equivalent form of authorization has conferred the power of giving benediction.

## **9 FAM 42.32(d)(1) N5.3 Ordained Buddhist Monk**

*(TL:VISA-54; 2-28-92)*

- a. Since the term "ordained minister" does not adequately translate into Buddhist terminology, the use of "ordained minister" within the Buddhist doctrine frequently will be found to have different meanings depending on the context in which it is used. The term also may apply to different levels of responsibility and participation within the faith. The ceremony conferring monkhood status in the Buddhist religion is generally recognized as the equivalent of ordination.
- b. Useful documentation for establishing entitlement to status might include determinations by directors and senior monks of monasteries which verify that the applicant has knowledge and skills which enable him to perform Buddhist rituals and explain Buddhist beliefs independently, and that the applicant has a demonstrated work record or established reputation as an active Buddhist monk. In reviewing letters which purport to confirm an individual's credentials, consular officers should take into consideration the endorsing temple's or monastery's size and significance. The number of senior officials, directors, monks, and the size of the congregation are ancillary elements to be weighed in establishing a Buddhist monk's entitlement to special immigrant status under INA 101(a)(27)(C).

## **9 FAM 42.32(d)(1) N5.4 Professional Religious Workers**

*(TL:VISA-680; 01-28-2005)*

- a. With respect to religious workers, DHS regulation 8 CFR 204.5(I) says:

"Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree (or a foreign equivalent degree) is required."

- b. House Report No. 101-723 defines Category II religious workers as those in "occupations such as teachers."

## **9 FAM 42.32(d)(1) N5.5 Workers in Religious Vocations or Occupations**

*(TL:VISA-680; 01-28-2005)*

DHS regulation 8 CFR 204.5(1) defines religious vocation and religious

occupations as follows:

“Religious vocation means a calling to religious life as evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to nuns, monks, and religious brothers and sisters.”

“Religious occupation means 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, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.”

## **9 FAM 42.32(d)(1) N6 PETITIONING CHURCH CAPABLE OF COMPENSATING ALIEN ENSURING SUPPLEMENTAL EMPLOYMENT NOT LIKELY**

*(TL:VISA-680; 01-28-2005)*

To assure that an applicant will enter the United States solely for the purpose of carrying on a religious vocation, particularly in smaller churches, DHS requires evidence such as the following:

- (1) Bank letters;
- (2) Recent audits;
- (3) Church membership figures; and/or
- (4) The number of ministers and staff currently receiving compensation, etc.

## **9 FAM 42.32(d)(1) N7 ALIEN MEMBER OF RELIGIOUS ORGANIZATION**

*(TL:VISA-54; 2-28-92)*

An alien seeking entry under INA 101(a)(27)(C) must have been a member of the religious denomination having a bona fide non-profit organization in the United States for at least two years immediately preceding the time of application for admission.

## **9 FAM 42.32(d)(1) N8 ALIEN CARRYING ON VOCATION OR RELIGIOUS WORK FOR AT LEAST TWO YEARS**

*(TL:VISA-680; 01-28-2005)*

Department of Homeland Security (DHS) will be relying on the evidence submitted by the petitioner regarding the alien's qualifications as well as those of the organization. If the consular officer learns that the alien's activities in the immediately preceding two years were not related to religious functions, he or she should review the activities for the two years immediately prior to visa application to evaluate whether or not the alien has been continuously carrying on the vocation of a minister or other professional or religious worker. For example, a minister whose activities are such as to indicate engagement in activities which contribute to furtherance of the ministerial vocation, and which are not in any way inconsistent with that vocation, may be considered to have met the requirement of continuous practice as a minister. Activities considered acceptable for fulfilling the two-year requirement include: seminary study, teaching at a religious academy, spiritual/pastoral counseling, etc.

## **9 FAM 42.32(d)(1) N9 SPOUSE OR CHILD OF RELIGIOUS WORKER**

### **9 FAM 42.32(d)(1) N9.1 Accompanying or Following-to-join Spouses and Children**

*(TL:VISA-54; 2-28-92)*

Accompanying or following-to-join spouses and children of a fourth preference alien who has the status of special immigrant as a minister of religion or religious worker may be granted derivative status. A spouse or child acquired subsequent to visa issuance but prior to entering the United States, or a child born of a marriage which existed at the time of the

principal alien's admission to the United States, is entitled to employment-based fourth preference status.

## **9 FAM 42.32(d)(1) N9.2 Defining "Spouse" and "Child"**

*(TL:VISA-11; 5-5-88)*

See section 9 FAM 40.1 Related Statutory Provisions.