

The Honorable Rena Bitter
Assistant Secretary
Bureau of Consular Affairs
Department of State

The Honorable Ur Jaddou
Director
U.S. Citizenship & Immigration Services
Department of Homeland Security

February __, 2024

Re: Current Issues and Recommendations for the Visa Bulletin Retrogression – EB-4 Preference Visa Category, Religious Workers

Dear Assistant Secretary Bitter and Director Jaddou:

The undersigned religious organizations and advocates for religious workers write to express our concerns about the effects of recent changes that negatively impact religious workers, who are essential to America's wellbeing and the religious organizations they serve. We recognize that elimination of the EB-4 immigrant visa backlog requires significant Congressional action; however, we also know that there are changes that can be made to regulations and practices that could reduce the damage caused by this change. While a future proposed rule has been listed in the most recent regulatory agenda that may make some improvement in this situation, the public rulemaking process is not estimated to begin until October 2024,¹ so any improvement would likely not occur until 2025. Many religious workers and religious institutions would continue to struggle for far too long during this timeline. We appreciate your careful consideration of our concerns and suggestions in an effort to minimize the current challenges religious workers face.

I. Religious workers are essential workers

Foreign-born religious workers provide crucial services and spiritual support to our communities throughout the United States. These workers come to the United States to work in underserved communities and provide essential services to faith-based organizations and communities at large. Besides performing duties reserved to members of the clergy, these services also include: providing support to the most needy; caring for and ministering to the sick, aged, and dying in hospitals and special facilities; assisting religious leaders as they lead their congregations and communities in worship; counseling those who have suffered trauma or hardship; supporting families in crisis, helping refugees and immigrants in the United States adjust to a new way of life and so much more. Despite their contributions, many foreign-born religious workers, who we wish to continue working with us permanently, are forced to stop work. Recently, the changes involving the visa bulletin retrogression are forcing religious workers to depart the United States before a visa becomes available to obtain a green card. If religious workers are forced to depart the United States, because of these policies, religious organizations will lose their support, resulting in the loss of services for the neediest and reduced religious activities due to understaffed places of worship.

¹ See Modernizing Regulations Governing Nonimmigrant Workers, RIN 1615-AC88, OFF. OF INFO. & REG. AFF., <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1615-AC88>.

II. Changes to the visa bulletin significantly affect religious workers

The changes to the visa bulletin in March 2023, have significantly impacted religious workers. We were given essentially no time to prepare for the impact this would have on our foreign-born religious workers and our organizations. The community and our organizations rely on the services that they provide. In previous years when religious workers applied to adjust their status to obtain a green card, the wait time was about one to two years. Today, a minimum wait time of more than five years will become the new normal for religious workers. The heavy consequence of this change is that religious workers who seek to adjust their status will now have to make a choice to depart the United States for a minimum of one year or hastily find another lawful path to remain until their wait time becomes current. But for most religious workers, any alternate paths to remain in the United States are either unavailable or would require the applicant to leave their employer, and thereby leave their religious community with insufficient support. The retrogression leaves thousands of religious workers on the path to adjust their status in a troubling predicament. Religious organizations will be left short-staffed, possibly for an extended period, and the people they serve will suffer the consequences.

III. Administrative recommendations to help minimize the consequences of the visa retrogression

We urge the Department of State (DOS) and the U.S. Citizenship and Immigration Services (USCIS) to reconsider the recent changes to the visa bulletin to minimize the harm done to religious workers and their communities. To ensure that our communities' and social needs are met, the Agencies must act to reduce the harm and disruption caused by this policy change. We make the following recommendations:

One of the most significant changes the Agencies can make in a shorter time frame is to shorten the length of time that religious workers are required to remain outside the United States once their time in religious worker status expires. The prospective regulation listed in the regulatory agenda may implement such a change; but as mentioned above, it is not scheduled to begin the public commenting process until October 2024 and, if successful, would not take effect until 2025. We recommend that USCIS and DOS issue an interim final rule which could be implemented much faster to shorten the one-year physical presence requirement outside the United States before re-entry in a new five-year period, to no more than thirty days. This reduction in the requirement for physical presence outside the United States would help to ensure that our organizations are not short-staffed for a length of time that will cause harm to our congregations and communities.

We also recommend that the DOS provide training to their officers to ensure that religious workers are not unfairly delayed or denied upon requesting a new visa for religious worker status. Under current regulations, religious workers may demonstrate what the Agencies recognize as "dual intent."² Such intent allows religious workers to enter the United States on a nonimmigrant R-1 visa to work on a temporary basis under that status and simultaneously express intent to stay permanently in the United States. In the past, some religious workers have reported experiencing delays being readmitted in R-1 status while their petition to obtain an immigrant visa is pending. Due to the new delays in the immigrant visa process, more religious workers will appear for nonimmigrant visa interviews where dual intent could be a factor. Without proper preparation and training of officers for this change, they may face delays, additional questions, and potentially wrongfully denied R-1 visas. Legal practitioners want to know that their client's request for a new five-year period in R-1 status is not going to be delayed or denied simply because they have a pending immigrant petition.

² 9 DEP'T ST., FOREIGN AFF. MANUAL §402.16, *available at* <https://fam.state.gov/fam/09FAM/09FAM040216.html>.

Lastly, we recommend that USCIS and DOS reimplement the visa bulletin retrogression with the consideration that religious workers and the organizations relied on the previous policy for many years. The sudden impact left both parties with insufficient time to prepare for their future plans and was overly burdensome to religious workers and others in the EB-4 visa category. Implementing the policy with a phased approach would allow for sufficient planning for the religious workers and the organizations that employ them. We also want to acknowledge and thank DHS for their recent announcement that they will extend the validity of employment authorization documents issued to religious workers with pending applications for permanent residence from two years to five years.³

IV. Conclusion

DOS's announcement did not provide adequate time for religious workers or their employers to make sure that the needs of religious communities can be met. We urge you to consider the solutions listed above that are available to USCIS and to DOS without congressional action.

Sincerely,

[the undersigned organizations]

CC: Julie Stufft, Deputy Asst. Secretary for Visa Services, Bureau of Consular Affairs, DOS
Samantha Deshommes, Chief Regulatory Officer, Regulatory Coordination Division, Office of Policy and Strategy, USCIS
Andrea Lage, Acting Senior Regulatory Coordinator for Visa Services, Bureau of Consular Affairs, DOS

³ Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act, DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border> (Sept. 20, 2023).