



CATHOLIC LEGAL
IMMIGRATION
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CLINIC Transition Paper: Rebuilding and Restoring the Foreign-Born Religious Workers Program

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“I am here because I know that there is a need in this parish. There is a need for these people. And these people are God’s people. They need my ministry. That’s why I’m here. Otherwise, I don’t need this travel. I can go back to where I was. To have this move in our lives is not easy.”

— Father Marinaldo Batista, a Brazilian priest with dual Italian citizenship, [Clergy and religious immigration to the U.S. continues sans headlines](#) (May 2019)

“Religious workers provide vital work to communities, hospitals and schools, and they add to the spiritual strength and well-being of the United States. The communities they serve help to keep our economy humming and continue the American tradition of welcoming immigrants. Requiring these workers to meet income standards based on a middle-class lifestyle represents a core misunderstanding and rejection of their work and value.”

— Sister Sally Duffy, Treasurer, Board of Directors at Catholic Legal Immigration Network, Inc., [Trump wants to cut down on legal immigration. Here’s how that will affect religious workers](#) (September 2019)

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Why the Foreign-Born Religious Workers Program matters

Religious workers provide a vast array of key services to American communities, often serving as the only safety net to vulnerable populations in rural and underserved areas. The U.S. Conference of Catholic Bishops writes, “Among the important tasks non-minister religious workers perform are: providing human services to the most needy, including shelter and nutrition; caring for and ministering to the sick, aged, and dying in hospitals and special facilities; working with adolescents and young adults; assisting religious leaders as they lead their congregations and communities in worship; counseling those who have suffered severe trauma and/or hardship; supporting families, particularly when they are in crisis; offering religious instruction, especially to new members of the religious denomination; and helping refugees and immigrants in the United States adjust to a new way of life.”¹ Religious workers operate day and night in all critical areas of service, including churches, hospitals and schools. Now more than ever, as our country faces COVID-19, we need these individuals serving in these vital roles.

Number of people impacted

The Religious Immigration Services department, or RIS, at the Catholic Legal Immigration Network, Inc., or CLINIC, represents more than 200 religious organizations inside the U.S. and more than 800 foreign-born religious workers. Of the immigrants CLINIC’s RIS office represents, the majority of clients are from Mexico, the Philippines and India. More than 150 of RIS clients are coming from predominantly Black countries to serve in Black Catholic communities in the United States. In Fiscal Year 2019, the Department of State issued 6,288 visas for persons in a religious occupation. In addition, United States Citizenship and Immigration Services, or USCIS, reports that in Fiscal Year 2019, 14,817 people were admitted into the United States with the “R” Classification, signifying religious workers. These are workers of all faiths coming to the United States to serve in religious communities.²

Previous administration’s policy and the human consequences

Under the previous administration, historic processing times and continuous policy changes at USCIS led to a huge decrease in access to the religious workers program. USCIS policy changes that affected religious workers included changes to the “Public Charge” policy, the lack of options for expediting petitions and applications, changes to deference and Request for Evidence, or RFE, policies, extreme vetting and the fee schedule.

In the midst of rapid policy changes, the quality of adjudications has degraded and generally reflect a relative lack of knowledge of the religious worker program. Often, religious workers were disproportionately impacted because although the religious worker program is an employment-based category, it is often treated differently, and does not benefit from more favorable policies that other employment-based categories enjoy.

The consequences were two-fold, affecting both religious organizations themselves and the American communities they serve. The decrease in religious workers continues to be particularly harmful during the COVID-19 pandemic, when Americans are in need of increased spiritual and physical care. Religious sisters and brothers have continued their work in local communities despite personal risk of infection. In addition, priests have continued to travel to health care facilities to perform last rites to those infected with COVID-19. The importance of their role to those afflicted by this terrible virus cannot be understated. There may be no greater gift of self-sacrifice than offering a measure of comfort to those who are contagious and dying alone. CLINIC represents priests who volunteer to serve the sick at local hospitals at their own personal risk.³

In order to provide access, equality in adjudication and more timely adjudication of petitions for foreign-born religious workers and their religious organization sponsors, the Biden administration should do the following in the first 100 days:

Recommendation 1

Expand Premium Processing Service To Include Form I-360, Petition for Special Immigrant Religious Worker

USCIS can adjudicate religious worker cases in a more timely manner by expanding the existing premium processing service to include I-360 Petitions, the immigrant petition for religious workers. This would also help to increase revenue for USCIS. Religious workers already have this option for the nonimmigrant religious worker category. In addition, this would be equitable as the option is already available for the immigrant petition in other employment-based categories. USCIS should treat all types of employment equally and offer the same avenues for speedy adjudication to religious workers that are available for other employment-based categories.

Congress recently passed a bill allowing USCIS to implement premium processing in a variety of petition types with the exception of the Form I-360 for Religious Workers. This makes it clear that USCIS can expand premium processing service for additional forms as needed. The Biden administration should direct the new head of the Department of Homeland Security to prioritize the premium processing option for religious workers who are applying for permanent residency.⁴

Recommendation 2

Reinstate 90-Day Processing Time for Employment Authorization Applications When Filing Based Upon A Pending Permanent Residence Application.

In January 2017, DHS eliminated the regulatory requirement that employment authorization cards be processed in 90 days or less, as well as the issuance of “interim” EAD cards.⁵ In place of this, USCIS provided a 180-day automatic extension of the employment card if the renewal application met certain qualifying criteria.⁶

By removing the 90-day regulatory requirement, USCIS has significantly increased instability for employers and foreign-born religious workers. Due to additional increased scrutiny for these critical applications, foreign-born religious workers are now having periods where they are unable to work at all. Instead of slightly moving beyond 90 days, the processing time of these applications is now frequently over 180 days. As a result, they must stop working while they wait on the application to be adjudicated. In the case of religious workers, a diocese must quickly find someone to cover at that parish for an uncertain period. This can result in changes to Mass times, confession times, etc., as a single priest is spread across multiple parishes. The parishes are often not close to each other when the diocese covers a large, primarily rural area. The overall consequence is a loss of spiritual services in American communities.

By prioritizing adjudication of employment authorization applications with the standard security protocols that were in place prior to January 2017, USCIS can speed up the processing of these applications and lessen the agency’s backlog as well. Both the agency and the public benefit from USCIS operating more efficiently.

Recommendation 3

Reinstate Concurrent Filing for Religious Workers Filing Form I-360

USCIS previously allowed religious workers to concurrently file Form I-360, the immigrant petition, with the Form I-485, the permanent residence application. While other employment-based immigrant categories are still allowed this option, USCIS ended this option for religious workers on Nov. 9, 2010. This is particularly problematic since R-1 visa holders are unable to extend their non-immigrant status past the 5-year statutory limit.⁷

In the last four years, processing times for petitions and applications filed with USCIS have increased greatly. Significant delays in the permanent residence process for religious workers has resulted in negative impacts on religious workers and religious institutions in the United States.

The processing delays are compounded by consulate closures and the Executive Proclamation that prevents religious workers from applying for immigrant visas.⁸ If a religious worker departs the United States today, there is no way of estimating a timeline for their return since they are not permitted to apply for the immigrant visa. Consequently, dioceses are left with the burden of unstaffed positions for indefinite periods of time, again affecting community services. By allowing the two forms to be filed together, USCIS would decrease the

amount of time for religious workers in the permanent residency process while also increasing agency efficiency.⁹

Recommendation 4

Create a Religious Worker Exception for Form I-944 To Treat All Employment-Based Immigrant Processes Equally

Form I-944, the Declaration of Self-Sufficiency, should be rescinded along with the entire “Public Charge” rule. Until that happens, it should not be required for religious workers. First, it is not required for other employment-based categories. Second, requiring the Declaration of Self-Sufficiency and its supporting documentation shows a fundamental lack of understanding of what it means to be a foreign-born religious worker serving communities in the United States, as religious workers are supported by their institutions and often take vows of poverty. Finally, the form and the required documentation pose a significant financial and time burden on religious organizations and workers.

Other employment-based categories file the Form I-140, Immigrant Petition for Alien Worker, as the first step in their permanent residency process, whereas religious workers file the Form I-360, Petition for Special Immigrant Religious Worker. Those who file the immigrant petition for alien worker, are not required to complete the Declaration of Self-Sufficiency. However, the religious workers who apply for permanent residency are required to complete it. By requiring the form, religious workers are being treated differently than all other employment categories when it comes to public charge and the specific aspects of religious life (not having a salary, living a cloistered life, etc.) results in diminished access.

Recommendation 5

Reinstate Expedite Criteria That Were Removed by USCIS on May 10, 2019

On May 10, 2019, USCIS issued new criteria for when a case filed with USCIS may be expedited, narrowing the situations in which this discretionary benefit can be used. Specifically, there previously was an avenue to request that a case be expedited if the case was for a “*Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States.*” In addition, there was an option to request the case be expedited if there was an emergency. These options are no longer available. Reinstating these paths to timely adjudications is one way USCIS could help religious workers immediately.¹⁰

Recommendation 6

Congress Should Make the Non-Minister Sunset Provisions for Special Immigrant Religious Workers a Permanent Program Instead of Being Tied To the Federal Budget

The Non-Minister Sunset Provisions affect all religious workers except for ministers. These provisions are currently tied to the federal budget, which means religious sisters and brothers are constantly facing the fear that permanent residency will no longer be available. Pending applications can be denied and no new

applications can be filed when this law lapses. As the validity period of the federal budget has moved to a few months at a time, there is a constant pressure on religious workers and religious organizations to quickly file applications without knowing if the cases will be denied due to a lapse in the budget renewal.

This lack of certainty affects USCIS in that the adjudicating officers must constantly watch the calendar for the deadlines to make sure that cases are not processed after an expiration of the Non-Minister Sunset Provisions. It makes the immigration process unnecessarily more stressful and less reliable for religious sisters and brothers who simply want to serve their communities in the United States. By removing the temporary nature of the Non-Minister Sunset Provisions and making it a permanent part of immigration law, the Biden administration could take quick, definitive action to improve the immigrant process for foreign-born religious workers in the United States.¹¹

Recommendation 7

Create a Religious Immigration Stakeholder Group in DHS/USCIS

Prior to the Trump administration, religious organizations were provided a chance to offer feedback and communicate with USCIS on important topics affecting religious worker immigration. During the last four years, there has been no opportunity to work with the administration or USCIS to discuss how policy changes will impact the lives of those CLINIC's RIS team serves. The Biden administration should reopen lines of communication and feedback by establishing a religious worker stakeholder group. As with all stakeholder groups, this will help USCIS receive crucial early feedback that will help to fix any possible issues before the changes are put into place, improve existing process, and overall improve the efficiency of the immigration legal services field.

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To learn more about CLINIC's Administrative Advocacy Priorities, please visit: cliniclegal.org/advocacy.

Endnotes:

¹ The Catholic Church and Immigrant Religious Workers, United States Conference of Catholic Bishops, usccb.org/issues-and-action/human-life-and-dignity/immigration/specialimmigranreligiousworkervisas (last visited Nov. 19, 2020).

² Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2017 to 2019, U.S. Department of Homeland Security (Oct. 28, 2020),

travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-TableXVI-A.pdf; dhs.gov/immigration-statistics/yearbook/2019/table25.

³ Elizabeth Dias, *The Last Anointing*, The New York Times (June 6, 2020),

nytimes.com/interactive/2020/06/06/us/coronavirus-priests-last-rites.html.

⁴ Premium Processing Fee Increase Effective October 19, 2020, U.S. Citizenship and Immigration Services (October 16, 2020), ; U.S. 116th Congress, H.R.8337 - Continuing Appropriations Act, 2021 and Other Extensions Act, Oct. 1, 2020, congress.gov/bill/116th-congress/house-bill/8337/text.

⁵ 81 Fed. Reg. 82398 (Nov. 18, 2016), federalregister.gov/documents/2016/11/18/2016-27540/retention-of-eb-1-eb-2-and-eb-3-immigrant-workers-and-program-improvements-affecting-high-skilled.

⁶ Automatic Employment Authorization Document (EAD) Extension, U.S. Citizenship and Immigration Services (Feb. 1, 2017), uscis.gov/working-in-the-united-states/information-for-employers-and-employees/automatic-employment-authorization-document-ead-extension.

⁷ 8 CFR § 214.2(r)(1). "To be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years..."

⁸ Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak, The White House (April 22, 2020) whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/.

⁹ See *Ruiz-Diaz v. United States*, 618 F.3d 1055 (9th Cir. 2010) (affirming USCIS rule prohibiting religious workers from concurrently filing as a permissible construction of the statute).

¹⁰ How to Make an Expedite Request, U.S. Citizenship and Immigration Services, uscis.gov/forms/forms-information/how-to-make-an-expedite-request (last visited Nov. 19, 2020).

¹¹ The Special Immigrant Religious Workers program is set to expire Dec. 11, 2020. Special Immigrant Religious Workers, U.S. Citizenship and Immigration Services (Oct. 29, 2020), uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4/special-immigrant-religious-workers.