

How immigration laws impact the hiring process for churches



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By John N. Simon

In 1990 Congress amended the Immigration and Nationality Act (INA) to create a special immigration status for ministers and non-ministers in religious vocations and occupations. With recent passage of restrictive immigration legislation in the state of Arizona (the now famous or infamous SB

1070) and similar legislation pending in several other states, there has been a growing concern among religious and ministerial workers as to their status or continued status in the U.S. workforce.

Further, the Homeland Security department continues to push for inspections of religious organizations in an effort to prevent radical groups from using these special visa programs to get terrorists into the country. Since its inception, reports of rampant fraud have abounded in the guest worker visa program despite attempts to correct this wrong.

Religious workers visa

What is the Religious Visa program? The R visa is a non-immigrant visa that allows religious workers (ministers and persons working in a religious vocation or occupation) to work in the U.S. for a period of five years maximum and eventually apply for a green card for permanent residence. To qualify for an R visa, the applicant must be: a minister, a person working in a professional capacity in a religious occupation or vocation, or a person who works for a religious organization or an affiliate in a religious occupation who has been a member of the religious group for at least two years immediately preceding the application.

A religious denomination is defined as a religious group that have some form of ecclesiastical government, a common belief or statement of faith, some form of worship, a set of religious guidelines, religious services and ceremonies, established places for worship, religious congregations or comparable evidence of a bona fide religious (non-profit, tax-exempt) organization. Do non-denominational groups qualify? According to many legal authorities versed in immigration law, there is a lot of trouble proving the requirements if a church does not share governance, laws and tenets with a sending church.

If an interdenominational religious organization is tax-exempt, it may also be treated as a religious denomination. A religious occupation is an activity relating to "traditional religious functions, i.e. religious instructors, religious counselors, missionaries and etc. but not maintenance workers, clerks and fundraisers who work for religious institutions. A religious vocation is defined as "a calling to religious life." This calling must be shown through the demonstration of commitment to the religious denomination, such as taking vows, i.e. nuns, monks, religious brothers and sisters.

Religious institutions catering to a particular ethnic group often make that group's members more comfortable by providing a minister or religious workers from the home country to perform services and other religious and cultural activities.

R visa program

Non-minister religious workers who work in areas as diverse as teaching in church supported schools, producing religious publications, sustaining prison ministries, training health care professionals to provide appropriate healthcare or perform other work to a traditional religious function also qualify for the R visa program. Religious workers, ministerial and non-ministerial, provide a very important function in the American community in which they work and live.

Hiring a foreign national employee (in this case an R visa worker) differs significantly from hiring a U.S. citizen and requires the hiring unit (church, school, etc.) to obtain an employment-based visa (R visa) before the individual can work in the U.S.

It should be noted that a major issue plaguing the R visa worker over the last few years is fraud. More than a third of the visas examined by investigators were based on fraudulent information.

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