

Immigration Options for Religious Workers



By Eileen M. Martin

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In the past few years, it has become difficult to prepare immigration strategies for religious workers due to the length of time it takes for religious worker green cards to be approved. The delay is new and does not make a lot of sense.

The U.S. Congress grouped green cards for religious workers and special juvenile immigrants together when the classifications were last updated, which was not a problem until recently. Since so many unaccompanied minors have entered the United States in the past few years and had green card applications filed on their behalf, the maximum number of approvals in the classification (EB-4, which stands for Employment-Based Fourth Preference) has been exceeded, and a backlog that may be as long as four years has ensued.

Frequently, religious workers are in the United States in R-1 status, which has a maximum time frame of five years. So, what can a religious worker or religious minister do to remain in the United States during the backlog? Look for another temporary nonimmigrant status to bridge the gap.

Many religious workers are employed in positions that minimally require at least a bachelor's degree. A religious

worker from Canada, Mexico, Australia, Chile or Singapore may be able to take advantage of the specialty occupation/professional classifications that exist under the free trade agreements that the United States has with those countries. The United States-Mexico-Canada Agreement has 63 enumerated professions into which an applicant must fit, but the other free trade agreements only require showing that the position minimally requires a bachelor's degree.

Another classification that may be available is the H-1B Specialty Occupation status. In order to qualify, there must be a showing that the position requires a specific university degree and that the beneficiary has that specific university degree. There is a very heavy demand for this classification and a cap on the number that can be approved. If a beneficiary is not successful in the random H-1B lottery, he or she may be able to find an employer who is not subject to the cap and is willing to offer employment. This is generally going to be an institution of higher education, or an employer that has an affiliation with such an institution. If a beneficiary finds employment (part time or full time) with an employer who is not subject to the cap, he or she may also seek concurrent employment with a cap-subject employer.

For religious workers with extraordinary ability and sustained national or international acclaim in the sciences, education, business, athletics, the arts, film or TV, the O-1 may be an option. This is a classification that requires that the beneficiary be a recipient of a major international award or meets several alternate requirements. Mother Teresa would have been a shoo-in with her Nobel Peace Prize! For those religious workers who do not have Nobel Peace Prizes, the list of alternate criteria — of which three must be met — includes: receipt of lesser international awards or major national awards; membership in associations that require outstanding achievements of their members; published material about the beneficiary; participation as a judge of the work of others; contributions of major significance in the field; authorship of scholarly articles; employment in a critical or essential capacity for organizations with a distinguished reputation; and evidence that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, as evidenced by contracts or other reliable evidence. While this may not be appropriate for every religious worker, it may solve the problem for some of them.

Some religious workers may want to attend or return to school, affording them the opportunity to obtain F-1 status for the duration of their studies.

While the current backlog of EB-4 is a problem for some religious workers and their employers, there are some solutions that could assist them through the use of temporary nonimmigrant statuses. Our Immigration Practice Team at Lippes Mathias LLP can help you learn more about these options. For further guidance on this process, contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com).

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Eileen M. Martin

Partner | Team Co-
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| Team Leader -
Canada-U.S. Cross
Border



Elizabeth M. Klarin

Partner

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