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Immigration of Religious Workers: Background and Legislation

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Summary

A provision in immigration law that allows for the admission of immigrants to perform religious work is scheduled to sunset on September 30, 2003. Although the provision has a broad base of support, some have expressed concern that the provision is vulnerable to fraud. The foreign religious worker must be a member of a religious denomination that has a *bona fide* nonprofit, religious organization in the United States, and must have been in the religious vocation, professional work, or other religious work continuously for at least 2 years. Bills (H.R. 2152/S. 1580) to extend the religious worker provision through September 30, 2008, have been introduced in both chambers. The House passed H.R. 2152 on September 17, 2003. This report will be updated as legislative activity warrants.

Introduction

Permanent legal immigration to the United States is regulated by a set of numerical limits and systems of preference categories delineated in the Immigration and Nationality Act (INA), and employment-based immigration comprises one of the major groups of the preference category systems.¹ Aliens who come to the United States through the permanent legal immigration categories are commonly known as legal permanent residents (LPRs). The fourth category of the employment-based preference system is known as “special immigrants,” and the largest number of special immigrants are ministers of religion and religious workers.² Religious workers are treated separately from ministers of religion and are limited to 5,000 immigrants annually. Accompanying

¹ The largest preference grouping is family-based immigration. Other groupings include diversity and humanitarian admissions. For more information, see CRS Report RS20916, *Immigration and Naturalization Fundamentals*, by Ruth Ellen Wasem.

² Other “special immigrants” include certain employees of the U.S. government abroad, Panama Canal employees, retired employees of international organizations, certain aliens who served in the U.S. armed forces, and certain aliens declared a ward of a juvenile court. INA §101(a)(27).

spouses and minor children of ministers of religion and religious workers are included as special immigrants.

Prior to the Immigration Act of 1990 (P.L. 101-649), ministers of religion were admitted to the United States without numerical limits, and there was no separate provision for religious workers. Religious workers immigrated through one of the more general categories of numerically-limited, employment-based immigration that were in effect at that time. The Immigration Act of 1990 amended the INA to redefine the special immigrant category to include ministers of religion and religious workers, but contained a “sunset” of the provision for religious workers on September 30, 1994. It was subsequently extended several times, most recently through September 30, 2003.³ The 1990 Act also created a new nonimmigrant (i.e., temporary) visa for religious workers, commonly referred to as the R visa.⁴

Religious Worker Definitions

Defining what constitutes religious work is daunting given the theological diversity of religions, denominations, and faith traditions. The education, training, and ordination requirements for ministers of religion and religious workers vary greatly by religious group. Under the special immigrant provisions, the INA defines ministers of religion and religious workers as follows:

(C) an immigrant, and the immigrant’s spouse and children if accompanying or following to join the immigrant, who —

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States —

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or a *bona fide* organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such a vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);⁵

³ Immigration and Nationality Technical Corrections Act of 1994 (P.L. 103-416), the Religious Workers Act of 1997 (P.L. 105-54), and the Religious Workers Act of 2000 (P.L. 106-409).

⁴ Religious workers on the nonimmigrant R visas may be admitted for up to 5 years.

⁵ INA §101(a)(27)(C); 8 U.S.C. 1101(a)(27)(C).

The regulations further define religious occupation as “an activity which relates to a traditional religious function.”⁶ The nonimmigrant R visa category of religious workers holds to the same definitions; aliens on R visas are not, however, held to the 2-year experience requirement. Religious workers are not subject to the labor certification requirements that many other employment-based immigrants must meet.⁷

The INA is silent on what constitutes a religious denomination, but the regulations offer the following definition:

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indica of a *bona fide* religious denomination. For the purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to §501(c)(3) of the Internal Revenue Code will be treated as a religious denomination.⁸

The U.S. Citizenship and Immigration Services Bureau in the Department of Homeland Security (DHS) is the lead agency for immigrant admissions.⁹

Trends in Admissions

In the wider sweep of legal immigration to the United States, religious workers represent a tiny fraction of the annual flow — 0.3% of the 1,063,732 immigrants in FY2002. While the number of nonimmigrant R visas issued since FY1992 (first year the category was available) exceeds that of the permanent admissions, it likewise constitutes a small portion of all nonimmigrants admitted. The issuances of R visas has moved steadily upward, but the levels of admission for permanent religious workers has varied since FY1992 (**Figure 1**).

Most religious workers who become LPRs are not arriving from abroad; rather they are adjusting status after they have lived in the United States. In FY2002, only 389 of the 3,127 religious workers and their families arrived from abroad, while 87.6% adjusted to LPR status as religious workers in the United States. It is likely that most of those who adjusted status had entered on R visas as temporary religious workers.

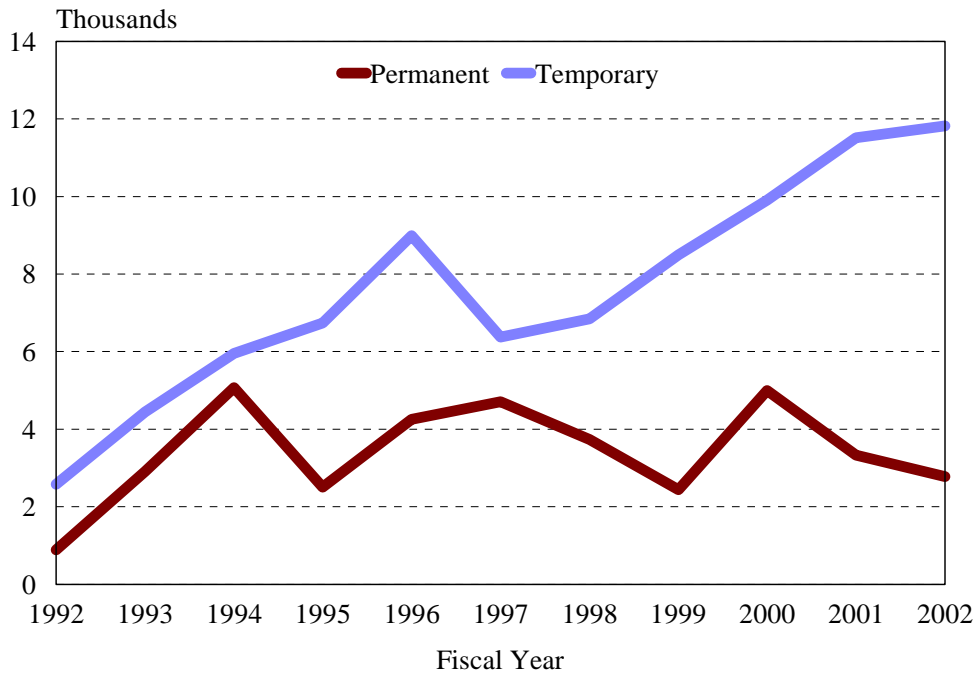
⁶ The regulations elaborate: “(E)xamples include but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. The group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.” 8 C.F.R. §204.5(m)(2).

⁷ Labor certification provisions are aimed at ensuring that foreign workers do not displace or adversely affect working conditions of U.S. workers. For a full discussion, see: CRS Report RS21520, *Labor Certification for Permanent Immigrant Admissions*, by Ruth Ellen Wasem.

⁸ 8 C.F.R. §204.5(m)(2). For a discussion of the tax exempt status, see: CRS Report RL31545, *Congressional Protection of Religious Liberty*, by Louis Fisher, p. 47-48.

⁹ Other agencies with primary responsibility for immigration functions are the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, both in DHS, and the Bureau of Consular Affairs in the Department of State.

Figure 1. Temporary and Permanent Admission of Foreign Religious Workers



Source: CRS presentation of data from the Report of the Visa Office, Bureau of Consular Affairs, and the Statistical Yearbook of the former Immigration and Naturalization Service. Data includes foreign workers and accompanying family members.

Legislation

Bills (H.R. 2152/S. 1580) to extend the religious worker provision through September 30, 2008, have been introduced in both chambers. Congressman Barney Frank introduced H.R. 2152 on May 19, 2003. The House Judiciary Committee ordered H.R. 2152 reported on September 10, 2003, and the House passed H.R. 2152 on September 17, 2003. Senate Committee on the Judiciary Chairman Orrin Hatch introduced a bill similar to H.R. 2152, the Religious Worker Act of 2003 (S. 1580), on September 3, 2003.

Although the extension of the religious worker provision has a broad base of support, efforts to make it a permanent immigration category have not succeeded. Some have criticized the religious worker provision as vulnerable to fraud. A few have expressed fear that it may be an avenue for religious extremists to enter the United States. Others, however, point out that the INA has provisions to guard against visa fraud and to exclude from admission aliens who may threaten public safety or national security, and who commit fraud to enter the United States.¹⁰

¹⁰ For a full discussion of the grounds of inadmissibility, see CRS Report RL31215, *Visa Issuances: Policy, Issues, and Legislation*, by Ruth Ellen Wasem.