



A SHORT GUIDE FOR RELIGIOUS VISA APPLICANTS AND THEIR RELIGIOUS INSTITUTIONS

INTRODUCTION

Catholics from abroad travel to the United States for a number of temporary religious purposes – to visit, to attend religious ceremonies or meetings, for formation, other training, academic study, or for temporary employment. Usually a U.S. consular officer must issue a nonimmigrant visa that recognizes the proposed activity and authorizes travel and, hopefully, admission to the U.S. Each visa category has legal requirements that the applicant must satisfy to be issued the visa. Each visa category also has limitations on the types of activity authorized by the visa.

Denials of temporary visas can cause significant disruptions in plans or severe hardships for individuals. This guide hopes to help the religious visa applicant and religious institutions understand the basic requirements for some of the most commonly used nonimmigrant visa categories: the F-1 student visa, R-1 minister or religious worker visa, and B-1/B-2 visitor for business or pleasure visa. Its purpose is to assist in identifying issues that could lead to a visa denial.

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© 2006 all rights reserved. This guide was prepared by the Catholic Religious Immigration Group (CRIG), an ad hoc legal advocacy task force comprised of attorneys and members of the Society of the Divine Word (SVD), Techny, Illinois; the U.S. Conference of Catholic Bishops (USCCB), Washington, D.C.; and the Catholic Legal Immigration Network (CLINIC), Washington, D.C. CRIG has met with the U.S. State Department's Visa Office and seeks to promote religious freedom and benign immigration policies. The principal authors are Scott D. Pollock, Scott D. Pollock & Associates, P.C., Chicago, Illinois; Carlos Ortiz Miranda, Associate General Counsel, USCCB; and Sr. Margaret Perron, RJM, Division Director, CLINIC. More information and how to contact these organizations is contained at the end of this document.



F-1 STUDENT VISA FOR SEMINARIANS AND THE ISSUE OF IMMIGRANT INTENT

The U.S. Catholic Church relies increasingly on foreign-born seminarians for potential vocations in the U.S. These seminarians often times seek admission to study as “nonimmigrant” foreign students under the F-1 visa. Seminarians typically are awarded scholarships by dioceses, which enroll them in diocesan operated seminaries. They may also be sponsored by religious orders of the Church to enter colleges or universities.

WHAT CAN CAUSE A U.S. CONSULAR OFFICER TO DENY A STUDENT VISA UNDER SECTION 214(B)?

Many seminarians assume that they will be ordained upon the successful completion of seminary studies and incardinated upon graduation. Thus, when they are interviewed at a U.S. Consulate as they apply for a student visa, they may indicate that they will remain with a particular diocese or religious institute upon graduation, ordination, and incardination. Some seminarians in these situations have been denied F-1 visas to enter the U.S. because of “immigrant intent.” When a visa is denied on this basis, there is no formal review mechanism. An unsuccessful applicant may be told to reapply when they have better evidence of their “nonimmigrant intent.”

WHAT IS THE LAW AND HOW IS IT APPLIED TO F-1 STUDENTS?

U.S. law presumes that most foreign-born persons coming to the United States intend to remain permanently unless they can prove otherwise. International students are subject to this presumption. In order to be issued an F-1 visa, they must prove that they will return home at the completion of their studies. Students normally prove they will return by providing evidence of an unabandoned foreign residence, family members, adequate funding in the home country, and other ties to the home country that would compel them to return. This can, however, be difficult for many students. When a consular officer denies a visa for failure to prove nonimmigrant intent, it issues a “214(b)” denial, referring to a section of immigration law that addresses the presumption of immigrant intent.

In a recent cable sent to all U.S. consulates, the Department of State noted that the overuse of Section 214(b) to deny F-1 visas to international students is inappropriate, because students tend to be young persons with limited means or property, and whose futures are uncertain.¹ Thus, according to the State Department, “student visa applications must be adjudicated in the proper context, a long view.” The cable further states that special attention should be paid to whether the applicant intends *at the time of applying for the visa* to abandon his residence abroad and little weight should be given to “traditional” ties such as an unabandoned foreign residence.

¹ “Students and Immigrant Intent,” September 2005 cable is available on the internet at http://travel.state.gov/visa/laws/telegrams/telegrams_2734.html

While the State Department cable provides a welcome clarification, visa applicants will still need to persuade a consular officer that they do not expect to remain permanently in the United States when they apply for the nonimmigrant student visa.

WHAT IS THE CATHOLIC PERSPECTIVE ON INTERNATIONAL STUDENT VISAS?

Although dioceses and religious institutes invest in seminarians from abroad by providing scholarships and other expenses related to their studies, not all candidates will be able to complete their studies successfully. Thus, at the time of application for the student visa, there should be no expectation that a particular visa applicant will remain as an immigrant.

Diocesan, religious, and seminary officials must be aware of the legal requirement of having a present nonimmigrant intent and understand that an international student cannot lawfully have a preconceived intent to remain permanently in the U.S. Seminarians must understand that acceptance to the seminary does not mean that they will be successful and must be prepared to return home if they are not successful. The prospective seminarian must distinguish between a *desire* to remain in the U.S., if admitted, and a *preconceived intent to remain permanently* formulated before admission. When applying for the visa, the applicant should be prepared to articulate and affirm his present temporary intent.



R-1 VISA FOR RELIGIOUS POSTULANTS AND CANDIDATES ACCEPTED FOR NON-ACADEMIC RELIGIOUS FORMATION PROGRAMS IN THE UNITED STATES

Catholic religious institutes in the United States frequently receive inquiries from individuals abroad expressing a desire to discern and pursue a call to religious life within their communities. Some religious institutes do not have a presence in the individual's home country. Others have a presence but conduct all their formation programs in the U.S. Once the individual has completed the religious institute's application process and has been admitted into the postulancy or candidacy, s/he must then apply for a nonimmigrant visa to enter the United States to begin the formation program.

WHAT IS THE LAW FOR R-1 VISAS AND HOW IS IT APPLIED?

An R-1 nonimmigrant visa holder must 1) have been a member of the religious denomination for the two years immediately preceding the time of application for admission; 2) seek to enter the U.S. for a period not to exceed five years; and 3) seek to enter the U.S. to work for the organization, at the request of the organization, in a religious vocation or occupation. The R-1 visa has often been issued to religious candidates and postulants who come to the U.S. to engage in formation.

WHAT CAN CAUSE A U.S. CONSULAR OFFICER TO DENY AN R-1 VISA TO A RELIGIOUS CANDIDATE OR POSTULANT?

The R-1 visa is the most advantageous category for a religious candidate or postulant. It allows the individual to engage in a variety of formation and ministry experiences required by the religious institute for up to five years. But U.S. consular officers have denied some R-1 applications for candidates and postulants. Why might this happen?

First, as with F-1 student applicants, some consular officers require the R-1 applicant to show an “unabandoned” residence abroad and substantial ties to the home country. The consular officer may thus issue a “214(b)” denial. It is very important to know that the State Department’s own Foreign Affairs Manual says that “there is no requirement in the *Immigration and Nationality Act* (INA) that applicants for R-1 status establish that they have a residence in a foreign country which they have no intention of abandoning.” Even so, the R-1 applicant must be prepared to explain his or her temporary purpose in coming to the U.S.

Another reason given to candidates and postulants is that the consular officer does not consider them to be in either a “religious vocation,” because they have not taken final vows, or in a “religious occupation,” because the consular officer construes the formation program to consist of education or practical training, rather than employment in an occupation. These applicants have sometimes been advised to apply for a student visa, training visa, or even a visitor visa.

Finally, consular officers can refuse an R-1 visa to candidates and postulants because they do not have two years of “experience” in either the religious vocation or occupation. This reason is a simple misunderstanding of the law, since the R-1 visa requires only that there be two years of membership in the denomination, *not* two years experience. Only the permanent Special Immigrant visa classification for ministers and religious workers requires two years of experience.

HOW DO THE DEPARTMENT OF STATE AND U.S. CONSULATES VIEW THESE ISSUES?

In terms of ties to the home country, a February 26, 2001 Department of State cable clearly states that, for R-1 visas, the consular officer’s “...focus in regard [to] 214(b) should be on whether the applicant qualifies for status, rather than on whether the applicant intends to return to a residence outside the U.S. upon completion of stay in the U.S.” This position is reiterated in a recently issued March 24, 2005 DOS cable: “[INA Section 214(b)] cannot be simplified to mean only that applicants have “ties” or must intend to return home.” Rather “[t]he consular officer must focus on each requirement of the NIV category and be satisfied that the alien will comply lawfully with each requirement.” Even with this guidance, consular officers regularly deny R-1 visa applications for prospective religious workers based on INA §214(b), requiring the applicant to demonstrate the unabandoned foreign residence, family ties, and finances in the home country.

In informal conversations, officials from the Department of State's Visa Office have endorsed the restrictive interpretation that only final vows are determinative of a "religious vocation." They have indicated that other types of visas may be more appropriate for postulants or candidates, such as an H-3 trainee visa or an R visa based on religious occupation. They have invited Catholic entities that disagree with a visa denial in an individual case to forward the details of the denied application to their attention, so that the Visa Office can make its own determination about whether a proposed activity involves a religious vocation or occupation. It is noteworthy that many consulates have issued R-1 visas, and continue to do so, for religious candidates and postulants.

WHAT IS THE CATHOLIC PERSPECTIVE ON R-1 VISAS FOR RELIGIOUS CANDIDATES AND POSTULANTS?

Many Catholic religious institutes agree that candidates and postulants are engaged in a religious vocation, which immigration law defines as "...a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows." The taking of vows is one way, but not the only way, to demonstrate a commitment practiced in the religious denomination. Other Catholic entities may treat their formation programs as a "religious occupation," which U.S. immigration law defines as "an activity which relates to a traditional religious function." Current law and regulations appear to indicate that R-1 visas are appropriate for religious postulants and candidates who serve their religious communities and engage in ministry while pursuing their religious vocation. However, consular officers do not always interpret or apply the law and regulations in a uniform manner when deciding whether to issue an R-1 nonimmigrant visa to the postulant or candidate of a Roman Catholic religious institute.



RELIGIOUS VISITORS AND IMMIGRANT INTENT

Religious visitors to the U.S. seek B-1/B-2 visitor visas to participate in events such as ordination ceremonies of family members and other religious celebrations, conferences, and festivals. Often these visitors have been invited by the Church or a religious institute, which assumes responsibility for them during their visit to the U.S. Even in cases where the U.S. Consulate receives proof that the visit is sponsored by a bona fide religious organization in the U.S., religious visitors are on occasion denied visas. As with the F-1 student, the most frequent reason for denial is Section 214(b), the visa applicant's failure to overcome the presumption of immigrant intent. Predictably, this occurs most often in developing countries where there are high denial rates due to consular officers' perceptions that individuals are coming to the U.S. for work.

WHAT IS THE LAW FOR B-1 (VISITOR FOR BUSINESS) AND B-2 (VISITOR FOR PLEASURE) VISAS, AND HOW IS IT APPLIED?

U.S. law presumes that B-1/B-2 visa applicants intend to remain permanently in the U.S. Thus, visitors must prove that they will return home at the completion of their temporary

visit. This is done by providing evidence of (1) a foreign residence they do not intend to abandon; (2) intent to enter the U.S. for a specific duration of time; and (3) a legitimate temporary business or pleasure purpose. Consular officers often request evidence that the visa applicant has sufficient funds available to cover travel and expenses during the visit. In practice, U.S. consular officers routinely dismiss “third party statements” that may actually establish a visa applicant’s nonimmigrant intent or ability to support himself or herself during a visit to the U.S.

HOW DO THE DEPARTMENT OF STATE AND U.S. CONSULATES VIEW APPLICANTS FOR VISITOR VISAS?

Due to the enormous volume of visa applications at many consulates, U.S. consular officers often have only 3-5 minutes to decide whether an applicant should be granted a visa. The key to success is the applicant’s own presentation of his or her situation during this brief interview. An applicant for a visitor visa must respond credibly to a few short questions about his or her planned trip, including why he or she will return. An applicant should bring documentation of his or her home country ties, including confirmation of employment, financial assets, and family ties, letters, declarations, or other written assurances from third parties, including Church or religious institute officials. The latter three documents are, however, generally not persuasive. The applicant who presents a stack of documents but cannot readily articulate an intention to return to his or her country will be viewed with suspicion and possibly denied.

WHAT IS THE CATHOLIC PERSPECTIVE ON VISAS FOR RELIGIOUS VISITORS TO THE UNITED STATES?

The Church supports and encourages freedom of travel to the United States for religious purposes. While it recognizes that U.S. consular officers are challenged to identify genuine visitors to the U.S., the Church will do everything it can to encourage and promote legitimate religious visits and provide documentation to legitimate religious visitors to assist them in the application process. The Church recognizes that its role in assisting religious visitors is important, but limited. Catholic institutions should provide documentation of the religious event to legitimate visa applicants and, where appropriate, confirm any financial assistance that the visitor may receive from the Church. It is more important, however, to inform the visa applicant of what to expect and how to prepare for his or her visa interview.



TIPS FOR APPLYING FOR A U.S. NONIMMIGRANT VISA

- Understand the type of visa you are applying for and its legal requirements.
- Obtain documentation of the temporary nature of your trip to the U.S.
- Check the U.S. Consulate website where you will apply and read all the information it

has about applying for nonimmigrant visas and the particular visa you want to obtain.² Note the particular consulate's application procedures and documentary requirements.

- Know the details of your intended visit, including the purpose, location and duration of the proposed activity or activities. Create an itinerary for your visit and become familiar with it.
- Fully prepare all visa applications. Do not fail to disclose any information that the application requests.³
- Carry documents with you to the visa interview, but do not rely on them. Instead, rehearse the interview in advance, answering questions such as:
Why do you want a visa?
Where will you go?
How will you support yourself?
How can we be certain that you will not work without authorization in the U.S.?
How can we be certain that you will return to your home country?
- Remember that you will normally have only 3 minutes to persuade the consular officer of your good intentions.

WHAT TO DO IF THE VISA IS DENIED?

- Ask for the name of the consular officer and write it down. If the consular officer will not give his or her name, write down a physical description of the officer, and the date and time of the interview.
- Ask for a supervisor to review the decision.
- Insist on receiving a written explanation for the visa denial. The U.S. State Department requires a decision in writing for every visa denial.
- If the denial is only temporary and can be changed by providing additional documents, ask the consular officer and/or supervisor how you can overcome the denial or reapply.
- Prepare a detailed written narrative describing everything that happened from the time you arrived at the U.S. Consulate to the time you left. This should include an accurate record of all questions asked by the consular officer and/or supervisor, all answers you gave to the questions, and any other comments or conversations that occurred.
- Immediately call your religious superior or contact in the United States and provide them with a copy of the written denial notice and your written narrative.
- The religious institution in the U.S., through its attorney, should follow up by calling or e-mailing the U.S. Consulate with an inquiry and/or additional information to request reconsideration of the denial.

² Access to U.S. embassy and consulate websites is at <http://usembassy.state.gov>. If the link does not work, you may find the page by going to www.travel.state.gov.

³ Access to U.S. State Department forms and instructions is at http://travel.state.gov/visa/frvi/forms/forms_1342.html.

- If the U.S. Consulate refuses to reconsider its decision, the U.S. religious institution may seek assistance from the U.S. State Department's Visa Office for an advisory opinion (if a legal error was made by the post) or the U.S. State Department's Office of Religious Freedom.

A SHORT GUIDE FOR RELIGIOUS VISA APPLICANTS AND THEIR RELIGIOUS INSTITUTIONS was prepared by the Catholic Religious Immigration Group (CRIG). Members are:

The Society of the Divine Word



The Society of the Divine Word (SVD) is an international congregation of Catholic missionary priests and Brothers founded in 1875 by Saint Arnold Janssen in Steyl, Holland. The SVD is committed to undertaking educational, religious, charitable, social and pastoral activities in over 60 countries on six continents. In the United States, the focus of the Society's pastoral ministry is among the poor and minorities throughout our country. As membership in the SVD continues to grow, the Society has become more deeply involved in (and aware of) immigration issues to ensure that international students coming into the country and confreres working abroad do so legally. Overseeing that documents are in order, interview techniques, counseling and obtaining legal representation are a few of the services provided by the Society's Office of Education, Recruitment & Formation. For more information you are invited to contact Father James R. Braband, SVD at Divine Word Province Center, P.O. Box 6038, Techny, IL 60082; telephone: 847-272-2700.

The United States Conference of Catholic Bishops, Office of General Counsel



The United States Conference of Catholic Bishops (USCCB) is an assembly of the Catholic Church hierarchy who work together to unify, coordinate, promote, and carry on Catholic activities in the United States; to organize and conduct religious, charitable, and social welfare at home and abroad; to aid in education; and to care for immigrants. The bishops themselves constitute the membership of USCCB and are served by a staff of over 350 lay people, priests, deacons, and religious. USCCB has a long history involving immigration in the United States generally including an understanding of how immigration law and policy affect Church entities. USCCB has an active interest in the legislative aspects of the Religious Worker Visa Program (RWVP), as well as the administrative policies and practices through which the RWVP is administered by relevant federal agencies. USCCB's participation in the CRIG process is part of its stated interest in ensuring that the RWVP is properly understood and used by Church entities that might avail themselves of this important program. Questions concerning the RWVP can be addressed to USCCB's Office of General Counsel.

For more information about USCCB, please visit its website at www.usccb.org, or contact it at 3211 Fourth Street, NE, Washington, D.C. 20017; telephone: 202-541-3300, fax: 201-541-3337.

The Catholic Legal Immigration Network, Inc.

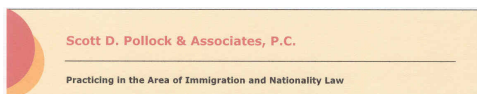


In 1988, the United States Conference of Catholic Bishops (USCCB) established the Catholic Legal Immigration Network (CLINIC) as a legally distinct 501(c)(3) organization to support a rapidly growing network of community-based immigration programs. CLINIC's network originally comprised 17 programs. It has since grown to 156 diocesan and other affiliated immigration programs with 255 field offices in 48 states. The network employs roughly 1,200 attorneys and "accredited" paralegals who, in turn, serve 400,000 low-income immigrants each year. CLINIC and its member agencies represent low-income immigrants without reference to their race, religion, gender, ethnic group, or other distinguishing characteristics. They serve the most vulnerable migrants, such as refugees, asylum seekers, detainees, families in need of reunification, laborers abused in the workplace, victims of domestic violence, and survivors of human trafficking.

CLINIC's Division of Religious Immigration Services (DRIS) meets the legal immigration needs of Catholic arch/dioceses, religious institutes, and the foreign-born priests, nuns, brothers and lay religious workers the Church seeks to immigrate. The Division's legal staff has more than 70 years of combined experienced in religious immigration law. DRIS currently assists 971 foreign-born priests, sisters, seminarians and religious laypersons coming to engage in formation, education, or ministry in the United States.

For more information about CLINIC and the services of its Division of Religious Immigration Services, please visit its website at www.cliniclegal.org or call 202-756-5549.

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Attorney Scott D. Pollock has practiced immigration law since 1985. From 1988-92 he was the program director of Immigration and Refugee Legal Services for the Catholic Charities of the Archdiocese of Chicago. Since opening his own practice, he has served as outside counsel to the Archdiocese of Chicago and numerous other Catholic arch/dioceses, seminaries and religious institutes, including the Society of the Divine Word in Techny, Illinois. The firm presently consists of six multicultural, bilingual, interfaith attorneys and a support staff of 14. It is a full-service immigration law firm, with extensive experience in all areas of immigration practice, including immigrant and nonimmigrant visas, political asylum, deportation defense, immigration detention issues, waivers of inadmissibility, employment authorization, employer immigration compliance and sanctions issues, and immigration litigation and appeals.

The firm's attorneys seek to provide personalized service, master complex U.S. immigration laws and provide vigorous advocacy, to identify and achieve the goals of its clients. They also value scholarship and service to the immigration law bar, to advance the cause of immigrants' rights and the progressive development of U.S. immigration law. The firm's attorneys are active members of the American Immigration Lawyers Association.

For more information about Scott D. Pollock & Associates, P.C. and its services, please visit its website at www.lawfirm1.com. You may also call the firm at 312-444-1940, or send an e-mail to info@lawfirm1.com.

