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Dr. Trace Haythorn, Ph.D.
Executive Director/CEO
Association for Clinical Pastoral Education, Inc.
One West Court Square, Suite 325
Decatur, GA 30030

Dear Dr. Haythorn:

I am pleased to provide you with this letter in response to some of your questions regarding the U.S. non-immigrant and special immigrant religious worker visa programs and how those programs might be a good fit for your organization or your students.

Please note that the information provided herein is solely for your purposes as the client of this Firm. No other entity or individual is entitled to rely on the contents of this letter.

Also, please note that all information provided herein is based on current U.S. immigration laws and policies, and that such laws and policies change frequently. As such, this information may or may not be reliable on any future date.

Finally, please note that nothing contained herein is intended to constitute legal advice about any specific situation, immigration petitioner or beneficiary. Every situation is unique and the applicability of immigration laws is always dependent on the unique facts and circumstances of any given situation.

The following are the questions you have presented and a brief discussion of each.

QUESTION 1: What types of R-1 visas are available and in what activities would your students be able to engage if they acquire one of the possible R-1 statuses.

The following are the three types of R-1 visas and a description:

VISA TYPE
R-1 Ministerial

DESCRIPTION

The R-1 Ministerial visa is only available to ordained ministers of religion.

The Beneficiary of any petition for an R-1 Ministerial visa must be working solely as a minister.

R-1 Occupational R-1 Occupational visas are available to any beneficiary regardless of ordination or lack thereof, so long as the beneficiary is qualified and meets any stated requirements for the position.

To obtain an R-1 Occupational visa, the proposed work must be solely religious in nature and must be proven to be a “traditional religious function” within the petitioning denomination.

R-1 Vocational R-1 Vocational visas are available to individuals who have made a “formal lifetime commitment” to the petitioning denomination. Examples include monks and nuns, although formal vows are not required so long as there is other indicia of a formal lifetime commitment, such as ceremonies, investitures, or other indicia.

Individuals with approved R-1 vocational visas can engage in any activity as any activity is deemed to be religious in nature for those with a proven vocation.

Apart from the specific requirements and permitted activities listed above, there are some limitations and permitted activities common to all R-1 visas.

First, individuals with R-1 status are ONLY permitted to work for the organization that submitted the petition for the R-1. Please note that an individual can maintain R-1 status for multiple petitioners simultaneously so long as the individual is performing a minimum of 20 hours of work per week for each petitioner.

Second, individuals with R-1 status are all permitted to engage in volunteer work. Please note that any such volunteer work must truly be done on a volunteer basis with no compensation, regardless of whether such compensation is monetary or not.

Finally, individuals in R-1 status are permitted to study. There are no statutory limitations on how much time an individual in R-1 status is permitted to study, although care must be taken to avoid any appearance that the individual is not continuing to perform the work specified in the R-1 petition. Also, please note that R-1 workers should avoid engage in study that is practical in nature (providing services to the school) if there is any element of compensation such as a student stipend or health insurance. Such a situation may be deemed to be an exchange of services for compensation and therefore unauthorized employment.

<p>QUESTION 2: What would be required of a petitioning congregation for the congregation to have an R-1 petition approved</p>
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The following are the requirements of an organization petitioning for an R-1 religious worker:

1. The organization must be non-profit and exempt from Federal taxation, as demonstrated by an IRS 501(c)(3) determination letter, or an IRS Group Ruling for the denomination of the Petitioner in the U.S.
2. The organization must be a bona-fide religious organization of the same denomination of which the R-1 religious worker has been a member for the two years immediately preceding the petition. With well-established religious denominations, such as Roman Catholicism, this is fairly easy to prove. This issue becomes more difficult when dealing with non-denominational Christian groups. In such situations, the petitioning organization must demonstrate a nexus between the organization in the U.S. and the organization of which the individual is a member, such as common forms of worship, a common creed and common forms of government.
3. The petitioning organization must demonstrate sufficient financial capacity to provide the proposed compensation. The compensation does not have to be monetary but must be sufficient to demonstrate that the individual will not become a public charge in the U.S. Note that the R-1 religious worker can indeed be self-support, but verifiable evidence of how the individual will provide his or her own support must be submitted.

QUESTION 3: What are the time restrictions for R-1 religious workers

An R-1 religious worker can spend no more than five years with R-1 status in the U.S. After five years, the individual will need to either depart from the U.S. or seek a change of status within the U.S. to a different nonimmigrant or immigrant category. If the individual spends one full year outside the U.S., the individual is eligible to return to the U.S. in R-1 status for an additional five years.

R-1 petitions are granted for a maximum of thirty months. This means that the petitioning organization would submit one petition for an initial 30-month period. If the organization wishes to continue to employ the individual in R-1 status, an extension of status petition will be required. Please note that the 5-year limit on R-1 status only counts days of presence in the U.S. So, for example, if an R-1 religious worker has had two approved petitions and has had R-1 status for five years, but spent an aggregate of six months outside the U.S. during those five years, another petition could be submitted for an extension of R-1 status for those six months.

QUESTION 4: What are the permanent residence options for R-1 workers (including the option of skipping R-1 and obtaining permanent residence from the start)

A petitioning organization meeting the same requirements as those petitioning for R-1 nonimmigrant workers may request a special immigrant visa for an individual who has been doing the same work on a full-time basis for the two years immediately preceding the special immigrant petition. Such immigrant visas are issued in the same ministerial, occupational and vocational categories as the R-1 nonimmigrant visas. Additionally, the same requirements apply to both the petitioning organization and the individual for permanent residence as apply for R-1 nonimmigrant workers.

There are some specific benefits to permanent residence in the U.S. as opposed to R-1 status, such as:

- **There is no five-year time-limit.** Once a permanent resident, the individual can remain in the U.S. indefinitely.
- **The individual can engage in any legal activity in the U.S. that is not reserved for U.S. Citizens (such as voting).** This means the individual can work for any employer and can engage in studies even if such studies include practical service and compensation. Please note, however, that at the time of requesting permanent residence, it must be the intent of the petitioning organization and the individual that the individual will perform the proposed work for the petitioner. Such intent can change in the future and the individual could cease such work and work for a different entity, but if such a change were to happen immediately after obtaining permanent residence there could be a presumption that there was a mis-representation of intent.

For the purposes of the ACPE and the scenarios you face as I understand them based on the facts you have related to me, there are likely three options for obtaining permanent residence for your students:

1. **Your students could obtain R-1 status, work full-time for 2 years inside the U.S. in R-1 status, and then the petitioner could request a special immigrant visa based on those two years of qualifying religious work.**
2. **The petitioning organization could request the special immigrant visa from the start while the individual is still abroad based on two years of qualifying work abroad.** Please note that proving the qualifying work can be more difficult if such work was performed abroad, as you would not have some of the traditional pieces of evidence like U.S. tax returns.
3. **The petitioning organization could request an R-1 visa for the worker (which would bring the worker to the U.S. faster than seeking permanent residence) and then subsequently request a special immigrant visa using both time in the U.S. and time abroad as the qualifying two years of work.** Please note that here again there could be an intent problem. R-1 is a nonimmigrant classification, meaning the individual cannot, at the time of entry, have the intent to remain in the U.S. beyond the approved R-1 validity period. If there is an immigrant petition submitted immediately after arrival in R-1 status, there may be a presumption of misrepresentation of intent.

I understand that the purpose of the training and certification you provide to your students is for the students to return to their home countries and apply the knowledge they received from ACPE. However, there are two scenarios in which it might be beneficial to seek permanent residents. First, should you ever need an individual to remain in the U.S. beyond the five years permitted in R-1 status, permanent residence would allow the individual to remain as long as needed. Second, should you need your students to engage in activities not permitted in R-1

status, such as the practical studies that involve compensation, permanent residence would allow for that.

Finally, please note that there are some practical barriers to obtaining permanent residence for religious workers of which you should be aware:

- There is a limit to how many immigrant visas are allocated annually for citizens of each country. Therefore, an immigrant visa may or may not be available for a specific individual depending on their country of origin and how many visas have already been claimed by citizens of those countries. This means that the petitioning organization can request the permanent residence, but the individual may have to wait months or years before being eligible to adjust his or her status in the U.S. or seek an immigrant visa from a U.S. Consulate abroad.
- The permanent residence process can take more time than the R-1 process. Currently, special immigrant petitions are taking roughly 5 months for processing, and then the subsequent adjustment of status within the U.S. or application for immigrant visa abroad can take an additional six months or more. As a general rule of thumb, you can plan on roughly one full year for obtaining permanent residence.
- The permanent residence process is more costly than seeking R-1 status. The full cost depends on each case and whether the individual will seek to adjust status in the U.S. or apply at a U.S. Consulate abroad, but in filing fees alone the process can cost \$1,000 - \$2,000 more than the R-1 process.

QUESTION 5: Does the religious worker visa program expire?

The religious worker visa program is the law that provides permanent residence to religious workers. For ministerial religious workers, the law has no expiration or “sunset” date.

For non-ministerial religious workers (those in religious occupations or those with religious vocations), the law does have an expiration date and has since the early 1990s. This law is currently set to expire December 8, 2017 unless it gets renewed by the U.S. Congress and such renewal is signed by President. The practical implication is that after the sunset date, any religious workers who don’t already have their permanent residence will no longer be eligible to obtain permanent residence. If the law is allowed to expire, any pending special immigrant religious worker petitions, any pending adjustment of status applications, or any consular applications for immigrant visas for non-minister religious workers will be denied.

Please note that this law has been extended every time and has not been allowed to expire. In the religious immigration world we always have high levels of confidence that the law will again be extended, but there is never any guarantee.

Also, frequently the law is extended for only days or months. This presents a conundrum of whether or not to file a special immigrant petition if there is not enough time for it to be

approved. Given the fact that it is rarely extended for a full year or more (which is roughly the time required for a full permanent residence process to be completed), and given that it has consistently been extended for the better part of the previous two decades, our general advice is to file for permanent residence even if there is not enough time remaining. However, as mentioned before there is no guarantee and if the law is not extended, the petitioners and applicants would not only lose eligibility to become permanent residence but would also lose any cost incurred in the process.

I hope this information is helpful in understanding how the ACPE and its students may benefit from the current nonimmigrant and special immigrant religious worker visa programs. If I can be of any further assistance or if you need assistance with a specific organization or individual, please do not hesitate to contact me.

Sincere regards,

Edward A. Volpe
Volpe Law Firm, P.C.