

Section 7 - Immigration

I. Overview

The following information is intended to provide Presbyterian Church (U.S.A.) mid-councils, congregations, and entities with general information about immigration law. This is not intended to be legal advice, nor is it an exhaustive source of information on U.S. immigration options. For more information, please contact the Office of Immigrations Issues which is housed in the Office of the General Assembly: Teresa Waggener at Teresa.Waggener@pcusa.org (web site:

<http://oga.pcusa.org/section/departments/immigration>)

Mid-councils, congregations and offices of PC(U.S.A.) often engage persons from other countries in the work of the church. In order to enter the U.S. to work or attend a conference as a lecturer, observer or participant, nonresidents must have proper authorization from United States Citizenship and Immigration Services (USCIS). In addition to reviewing the information below, it is important to consult with a lawyer to see which option best fits the needs of the church, mid-council or entity and of the nonresident.

II. Non-Immigrants

Non-immigrants enter the U.S. temporarily for a specific purpose and intend to leave the U.S. after completion of their approved visit. The State Department issues non-immigrant visas specific to the purpose of the nonresident's visit. Students, tourists, some athletes, exchange visitors, temporary workers, and many others enter the U.S. every day on non-immigrant visas. Each visa has its own limitations and rules about how long a person can stay or whether, and under what conditions, they can work. Non-immigrants must not violate the conditions of their stay. If a non-immigrant violates their stay they can lose their current non-immigrant status in the U.S. and cause the State Department to look at any future applications with more scrutiny. Such a violation of stay can also make the process for permanent resident status more difficult or impossible for a non-immigrant should they decide to apply adjust status to immigrant. For a full list of non-immigrant visa types and their descriptions please visit the State Department at <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html>.

Some non-immigrant visas are more commonly used in the church setting. The following is a general overview of those types of visas. The process for applying for a visa depends upon the type of visa required. For some visas a nonresident approaches the Embassy and applies on their own; other visas require a U.S. entity, such as a church, to petition the USCIS for a visa.

1. Religious Workers (R visa)

A religious worker visa is a non-immigrant visa that allows mid-councils and churches to call religious workers, who are not residents of the U.S., to work for the church. To qualify the religious worker must: 1) have been a member of a religious denomination having a bona-fide non-profit religious organization in the U.S. for the two (2) years preceding the petition; 2) be coming to the U.S. to work as a religious worker for at least twenty (20) hours a week; 3) be coming solely to work as a minister or in a religious vocation; 4) be coming solely to work as a religious worker for the petitioner; and 5) may not work in the U.S. in any other capacity. A religious worker visa status may be extended once for a total of up to five (5) years. The spouse and dependent children (unmarried and under the age of 21) of a religious worker can enter the U.S. in R-2 status, but in that status they may not work. For more information about religious worker visas and the religious worker visa application process, please contact Teresa Waggener at Teresa.Waggener@pcusa.org and visit the State Department website at:

<https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/temporary-religious-worker.html>.

2. Other Non-Immigrant Visas Commonly Used in the Work of the Church

An H-1B Visa can be used to bring a professional to the U.S. to work for up to six (6) years. A mid-council or congregation can use an H-1B when hiring a nonresident employee who does not have a religious vocation or for a religious worker who is ineligible for a religious worker visa. This process can be lengthy and more expensive than obtaining a religious worker visa, in addition the government has capped the number of H1-B visas issued each year and typically, those caps are reached early in the annual H1-B period. However, some employers like educational institutions (i.e. seminaries and colleges) are exempt from the cap. Under the H1-B program the spouse and dependent children of an H1-B worker can come to the U.S. in H-4 status, but they cannot work. For more information about the H1-B temporary worker visa program please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/employment/temporary-worker-visas.html>.

The F-1 Student visa program is available to persons who wish to study in the U.S. at a Student Exchange Visitor Program (SEVP) certified college, university or seminary. To qualify for a student visa, an applicant must be accepted at a SEVP school, possess sufficient funds to pursue the course of study, have the proper preparation for the course of study and intend to leave the U.S. upon completion of the course of study. For more information about the F-1 student visa program please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>. Typically students do not have permission to work off-campus, even in a congregational setting, but there are some exceptions for required and approved internships. For details, the student should speak to the Designated School Official at their institution.

The B-1 Business Visitor visa program permits visitors to come to the U.S. for business purposes, such as for attending a conference or workshop. It is important to note that the B-1 Visitor program does not allow for the visitor to receive a salary or income from a U.S. based entity. However, certain expenses may be reimbursed and, in **some limited** cases, a business visitor may receive an honorarium for some lecturing engagements.

To learn more about the B-1 Business Visitor visa program please visit <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>.

III. Immigrants

Immigrants to the U.S. are commonly referred to as green card holders or permanent residents. They have been legally admitted to the U.S. to permanently live and work. Immigrants can, after they have met certain requirements, become citizens of the U.S. The following is an overview of the four ways to become a resident in the U.S.

A. Diversity Lottery

The Diversity Visa Program makes available 55,000 visas annually to persons coming from countries with historically low rates of U.S. immigration. It is an opportunity for legally admissible persons who cannot qualify for immigrant visas under other available programs to apply and qualify for residency in the U.S. Each year the State Department opens the program for applications around October and closes the program around November of that same year. Names are randomly drawn from the pool of applicants and reviewed for admissibility in the U.S. When applying for the diversity visa program, applicants should only access the program from the State Department website and never respond to phone calls or emails from unknown entities since lottery scams and fraud are common. To learn more about the next diversity program,

please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/entry/diversity-visa-submit-entry.html>.

3. Family Based Immigration

A person wishing to immigrate to the U.S. under family based category must have a qualifying relationship with either a U.S. Citizen or Legal Permanent Resident (LPR) and that relative must file the proper petition. LPRs in the U.S. can apply for: 1) their spouse, 2) dependent children, and 3) unmarried sons and daughters. U.S. citizens can apply for an even greater list of family members: 1) spouse, 2) dependent children, 3) unmarried sons and daughters, 4) married sons and daughters, 5) parents, if the petitioning citizen is over 21, and 6) siblings. The spouses, dependent children and parents of U.S. Citizens are considered immediate relatives under the law and are not subject to a visa waiting list. All other family members, for LPRs and Citizens however, are subject to visa availability and must often wait to enter the U.S.

The State Department issues a monthly visa bulletin to notify the public and would-be immigrants of visa availability. To view the current visa bulletin and backlogs in family-based immigration please visit the State Department website at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>. To learn more about the application process please visit the State Department website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html>.

4. Employment Based Immigration

1. Special Immigrant Status for Religious Workers

Religious Workers who are in the U.S. under non-immigrant status may qualify for Special Immigrant Status if they: 1) have been a member of a religious denomination having a bona fide, non-profit religious organization in the U.S. for the two (2) years preceding the application; 2) are coming to the U.S. to work **full time** as a minister or in a religious vocation for that religious denomination; 3) are coming to work for a bona fide non-profit religious organization in the U.S.; and 4) were working as a religious worker continuously for the two (2) years preceding the petition.

The mid-council or congregation offering the full-time religious work, must petition for a religious worker to gain this status. Upon approval, a religious worker may then apply for permanent resident status in the U.S. A religious worker's spouse and minor unmarried children also qualify for permanent resident status through this process. For more information about this process, please contact Teresa Waggener in the Office of Immigration Issues at Teresa.Waggener@pcusa.org. You may also visit the State Department website at http://travel.state.gov/visa/immigrants/types/types_1324.html

2. Other Workers

An employer may petition for an employee to immigrate to the U.S. to work. There are different categories based on the credentials of the employee and requirements of the position. An employer must comply with strict guidelines regarding the advertising of the position and the inability fill the position with a U.S. Citizen or legal permanent resident worker. As with family-based immigration, the beneficiary employees of employment-based petitions may be subject to a visa waiting list. Please see the most recent State Department visa bulletin at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>

5. Humanitarian Based Immigration

The U.S. government allows for special categories of persons to immigrate to the U.S. for humanitarian reasons. Refugees, asylees, victims of domestic violence, victims of human

trafficking and other crimes and Iraqi and Afghan translators all have special programs that can lead to permanent resident status in the U.S. Each of these special categories carries with it different criteria. To learn more about gaining a green card through humanitarian based immigration, please visit the USCIS website at

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=194b901bf9873210VgnVCM100000082ca60aRCRD&vgnnextchannel=194b901bf9873210VgnVCM100000082ca60aRCRD>

IV. The Church as a Responsible Employer

Protecting Prospective Employee's Immigration Status

For a person born outside of the U.S., who may have, or develop, plans to make the U.S. their permanent home, unauthorized work can hinder those plans, making their immigration process longer, more expensive or impossible. By asking for documentation early in the process, an employer may prevent future immigration problems for prospective employees.

Moreover, we are a church who believes that “[t]he unity of believers in Christ is reflected in the rich diversity of the Church’s membership.”¹ Central to a search for any candidate for employment should be a desire to be faithful to the guidance of the Holy Spirit, who has a history of sending people on the move. How does one ask for immigration documentation without singling out a candidate, treating them differently than the others and, possibly, engaging in the offense of employment discrimination?

One way to do this is to ask early, at the application phase and, most importantly, *ask everyone*. Here is an example from the application form used to hire employees at the Presbyterian Center:

As a condition of employment, I understand that I will be required to furnish proof of my identity and authority to work in the U.S. as required by law. Do you have the legal right to work in the United States?	YES	NO
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1. I-9 Requirements

All employers must ask every employee, regardless of the employee’s nationality or immigration status, for proof of their authorization to work in the U.S., thereby complying with federal I-9 requirements. There are no exceptions for religious employers, no matter how small the congregation. Mid-councils and churches must complete, and keep on file, the I-9 form and supporting documentation for every member of staff. Employers who do not comply with I-9 requirements are subject to sanctions.

For the I-9 form and instructions please visit the USCIS website at: <https://www.uscis.gov/i-9-central/about-form-i-9/about-form-i-9>

2. Document Discrimination

The law sets forth documents acceptable as evidence of authorization to work. Page five of the I-9 form lists acceptable documents and/or combinations of documents. An employee may present any one or combination of those listed. An employer requiring specific documents and refusing other satisfactory documents has committed document discrimination and is at risk of sanctions from the Department of Justice or the Equal Employment Opportunity Commission.

¹ F-1.0403, Book of Order: The Constitution of the Presbyterian Church (U.S.A.), Part II

For more information, please visit the Department of Justice webpage at: <https://www.justice.gov/crt/immigrant-and-employee-rights-section> or the Equal Employment Opportunity Commission webpage at: <https://www.eeoc.gov/laws/types/nationalorigin.cfm>

3. Taxes

In addition to the requirement that employers verify each employee's eligibility to work in the U.S., employers must withhold certain taxes from employee's paychecks and employees must file the appropriate tax forms at the end of the year. Please visit the [IRS](#) webpage and consult with a tax attorney to make sure you comply with the law.