

March 1999

VISA ISSUANCE

Issues Concerning the Religious Worker Visa Program



**National Security and
International Affairs Division**

B-279903

March 26, 1999

The Honorable Lamar Smith
Chairman
The Honorable Sheila Jackson Lee
Ranking Minority Member
Subcommittee on Immigration and Claims
Committee on the Judiciary
House of Representatives

The Honorable Melvin Watt
House of Representatives

The Honorable Spencer Abraham
Chairman
The Honorable Edward M. Kennedy
Ranking Minority Member
Subcommittee on Immigration
Committee on the Judiciary
United States Senate

In response to concerns from the U.S. religious community about shortages of domestic religious workers to fill vacancies for religious positions,¹ the Congress established special immigrant and nonimmigrant visa² categories in 1990, for religious workers, religious professionals, and ministers. Religious worker visas constituted about 11,000, of the 7 million immigrant and nonimmigrant visas issued in fiscal year 1997. The Department of State and the Immigration and Naturalization Service (INS) share responsibility for issuing visas and admitting aliens into the United States. As a result of some recent fraud investigations, both agencies have expressed concern that some individuals and organizations that sponsor religious workers may be exploiting this category to enable unqualified aliens to enter or stay in the United States illegally.

¹The legislation uses the term "religious worker" to apply to (1) ministers, (2) those who work in a professional capacity in a religious vocation or occupation, and (3) religious workers and those in a religious vocation. This report focuses on the third category and, as used, includes those in vocations such as nuns and monks and those engaged in work related to a traditional religious function, including liturgical workers, religious instructors, counselors, cantors, workers in religious hospitals, and missionaries.

²Immigrant visas are for permanent stays in the United States, and nonimmigrant visas are for temporary stays.

At your request, we determined (1) the extent and nature of any fraud³ INS and State have identified in the religious worker visa program⁴ and (2) any steps INS and State have taken or plan to take to change the visa screening process. To meet our objectives, we interviewed INS and State headquarters officials, and we visited INS facilities in California, New York, Texas, and Vermont⁵ responsible for processing visas and investigating fraud. We also met with representatives of 12 religious organizations involved in the program.

Results in Brief

Although the Immigration and Naturalization Service and the State Department have identified some program fraud through the visa screening process and investigations, they do not have data or analysis to firmly establish the extent of fraud in the religious worker visa program. The nature of the fraud uncovered typically involved (1) applicants making false statements about their qualifications as religious workers or their exact plans in the United States or (2) conspiracy between an applicant and a sponsoring organization to misrepresent material facts about the applicant's qualifications or the nature of the position to be filled. INS and State sometimes detect fraud schemes when a sponsoring organization petitions INS for hundreds of religious workers at a time.

In order to increase the availability of information necessary to allow reviewers to determine the eligibility of visa applicants and sponsors, INS, with State's support, is considering changes to the visa screening process. These changes include (1) having an applicant submit additional evidence of his or her qualifications, (2) having the sponsoring organization submit additional evidence regarding its ability to financially support the applicant, and (3) incorporating new software applications that alert reviewers to organizations filing petitions for numerous workers. INS is also proposing a regulatory change to expressly require that the prior work experience specified for immigrant religious worker visa applicants be

³Immigration fraud involves the willful intent to circumvent the immigration laws of the United States by submitting false documents or misrepresenting material facts.

⁴By "program" we mean all of the requirements, processes, and procedures related to the issuance of religious worker visas.

⁵INS is organized into 3 regions, 33 district offices, 3 overseas offices, and a number of other offices. It also has service centers in California, Nebraska, Texas, and Vermont that process petitions, including those for religious workers. Each service center generally serves a specific geographic area and processes petitions from applicants from states in its respective jurisdiction.

full-time and that the individuals work for the religious organization in the United States on a full-time basis. The religious organizations we met with believe the current program meets their needs. Of the seven organizations commenting on the proposed regulatory change, three opposed it because some part-time religious workers that are currently eligible may no longer qualify.

Background

The Immigration and Nationality Act of 1990 established special immigrant and nonimmigrant categories for religious workers, religious professionals, and ministers.⁶ The act authorizes special immigrants to be admitted to the United States as religious workers if, for 2 years prior to admission, they have been members of a religious denomination having a bona fide, nonprofit, religious organization in the United States; they intend to enter the United States to work for the organization⁷ at the organization's request in a religious vocation or occupation; and they have been carrying on the religious work continuously for at least 2 years immediately preceding their application for admission. The act established a limit of 5,000⁸ on the number of special immigrant religious workers and religious professionals that can be admitted in any one year. Although the special immigrant provisions for religious workers and religious professionals were to expire on October 1, 1994, they have been amended twice and extended to October 1, 2000.

Applying for an immigrant religious worker visa is a two-step process. First, a petition must be filed with INS. A petition is the form the sponsoring individual or organization must file on behalf of an alien to demonstrate that the alien meets the requirements of a specific immigration category. The petition must include supporting documentation showing that the religious worker will be working for a religious organization and how the religious worker will be paid or remunerated. The documentation should also clearly indicate that the religious worker will not be solely dependent on supplemental employment

⁶Public Law 101-649, 104 Stat. 5004, 5027 (Nov. 29, 1990). The legislation also applies to spouses and children of religious workers.

⁷The act also authorizes the religious workers to work for a bona fide organization that 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.

⁸The employment-based preference limitation, under which special immigrant religious workers are included, is 140,000.

or solicitation of funds for support. INS reviewers examine the petitions and supporting documentation to determine if the alien meets the program requirements. If INS approves the petition, the alien files an application for an adjustment of status with INS if he or she is already in the United States or an application for a visa with a State overseas post if he or she is abroad. If the alien does not meet the requirements, INS denies the petition. About 85 percent of those admitted for permanent residence as religious workers in fiscal years 1996 and 1997 were already in the United States.

Nonimmigrant religious workers can be admitted under the same conditions as special immigrant religious workers, except that there is no requirement for prior religious work experience, and the maximum period of stay for nonimmigrant religious workers is 5 years. The authorization for admission of nonimmigrant religious workers did not contain sunset restrictions nor any limit on the number that can be admitted. To obtain a nonimmigrant visa, the alien files an application, but no petition is required. Documentation required in support of the visa application must establish the arrangements made, if any, for remuneration, including the amount and source of any salary, a description of any other type of remuneration, and a statement indicating whether the remuneration will be in exchange for services rendered. The majority of nonimmigrant religious workers applies and receives their visas abroad through State's overseas posts. (See app. I for more information on immigrant and nonimmigrant religious worker visa issuance.)

The Extent and Nature of Fraud

Both INS and State have expressed concern about fraud in the religious worker visa program, but they do not have data or analysis to firmly establish the extent of the problem. Their knowledge of program fraud is based on information developed primarily from fraud investigations and through the visa screening process. INS has conducted several fraud investigations since 1994 involving hundreds of applicants. In addition, fraud has been identified through INS' and State's visa screening processes. The agencies' reviewers generally deny petitions and visas to unqualified applicants, but according to the agencies' officials, it is difficult to prove willful intent to commit fraud. The types of fraud the agencies have encountered often involved petitioners making false statements about the length of time that the applicant was a member of the religious organization and the nature of the qualifying work experience. Some of the investigations involved religious organizations petitioning for more workers than they can reasonably support. Evidence uncovered by INS

suggests that some of these organizations exist solely as a means to carry out immigration fraud.

Extent of Fraud Not Known

INS and State have uncovered incidents of fraud in the religious worker visa program, but they do not routinely investigate questionable visa petitions and applications or report fraud information by type of visa. State's Bureau of Diplomatic Security, the office responsible for investigating the use of counterfeit U.S. passports and visas, has not conducted any investigations of religious worker visa fraud. State's antifraud units at overseas posts sometimes review suspicious applications to screen out ineligible applicants, but they do not routinely report the results to State's headquarters. Individual cases of suspected fraud are generally not investigated, unless the suspected fraud is part of a larger scheme to systematically circumvent immigration laws. Moreover, INS does not routinely follow up on recipients of employment-based visas, including religious visas, to determine whether they comply with the law.

The agencies generally deny questionable visa petitions and applications they receive. Most are not denied for fraud, but for other reasons, such as failing to comply with statutory requirements and regulations, including failure to provide requested documents. They give fraud as the reason for the denial when they have sufficient evidence that the applicant or petitioner willfully misrepresented a material fact. An INS workload report on immigrant petitions received, approved, and denied, showed that of the approximately 8,400 petitions for religious workers processed in fiscal year 1998, 3 percent were denied for suspected fraud. The reported 3-percent fraud denial rate for religious worker petitions was the third highest fraud denial rate among the 44 different immigrant petition categories listed. The fraud denial rate for most of the other categories was less than 1 percent. State Department statistics on visa denials do not identify denials by type of visa. However, a 1998 State survey of 83 overseas posts identified instances of fraud uncovered during visa processing.

Investigations Illustrate Schemes Used to Circumvent Immigration Laws

At our request, the Fraud Branch at INS' Office of Investigations in Washington, D.C., surveyed fraud units in INS' district and suboffices to identify the number of active and closed fraud investigations involving religious worker visas since 1994. The units identified 54 such investigations involving about 1,700 petitions⁹ during the 5-year period. The 54 INS investigations, of which about 40 are closed, ranged from cases involving individual fraud schemes to organized fraud rings.¹⁰ For

example, the fraud unit in the Chicago District Office investigated 30 cases involving individuals who failed to meet the 2-year experience requirement. At least five investigations performed by INS since 1994 have involved individuals or organizations filing petitions for hundreds of religious workers. For example, in 1995, INS investigated a pastor who filed 450 immigrant religious worker petitions covering over 900 individuals, falsifying the number of years the aliens had been a member of the church. The pastor died of natural causes before an indictment could be returned, and the petitions were denied or allowed to expire. INS recently completed an investigation it started in 1994 involving suspects who provided false supporting documents to INS to show that the aliens met the 2-year work experience requirement. This investigation, which involved over 400 petitions, ultimately led to the arrests of six individuals, guilty pleas to charges of conspiracy to commit visa fraud, and additional investigations of several similar schemes. In another recent case, reviewers at INS' Vermont Service Center became suspicious when one organization, which had filed about 100 petitions for immigrant visas the previous 2 years combined, filed over 200 petitions the third year. The reviewers doubted that the organization could support so many full-time workers and referred the case to an INS district office fraud unit where it is currently under investigation.

Some investigations were initiated because of suspicious activity identified by State Department consular officials. For example, consular officers at the U.S. embassy in Suva, Fiji, became suspicious of a church that filed petitions on behalf of 30 individuals from Fiji who were in the United States on expired visitors' visas. The information was forwarded to INS for investigation. The investigation revealed that only 1 of the 30 petitions met the requirements for a religious worker visa. The post suspected that this scheme was related to a larger one involving petitions on behalf of Tonga residents to stay in the United States illegally. Also, the U.S. embassy in Bogota uncovered a fraud scheme in which the local church was providing applicants with false documents to demonstrate that the applicants had been members of the church for the required 2-year period. The embassy's antifraud unit discovered that in some cases the applicants had recently joined the church, and in other cases, they had no membership affiliation at all.

⁹To arrive at these figures, we counted the number of investigations reported by each unit responding to the INS survey and the number of petitions involved when they were identified.

¹⁰In contrast, INS opened over 6,000 immigration fraud investigations in fiscal year 1997.

Changes to the Visa Screening Process

INS and State reviewers stated that they are not confident that the agencies' screening process is identifying all unqualified applicants and sponsoring organizations. They attributed the problem to the lack of sufficient information to determine the eligibility of visa applicants and their sponsors. INS, with State's support, is considering a number of steps to address this problem.

Lack of Sufficient Information

INS requires the petitioner to provide evidence that (1) the organization qualifies as a nonprofit organization, (2) the alien meets the qualifications for an immigrant religious worker visa, and (3) the alien will be paid or otherwise remunerated by the religious organization.

INS and State reviewers have asserted that sometimes the required supporting evidence, although minimally acceptable, consists of little more than a letter from the sponsoring organization and does not adequately establish an applicant's eligibility as a religious worker or the sponsoring organization's ability to pay the worker. The reviewer can deny the application or petition pending the receipt of additional information, but such actions take more time. The INS reviewers stated that more specific information about the applicant's training and qualifications and the exact nature of the position to be filled, including the number of petitions previously filed, should be provided up front, similar to other employment-based visa categories. In addition, unlike most other employment-based visas, the applicant can file a petition on his or her own behalf and, although supporting documentation from the sponsoring organization is still required, all of it can be submitted by the applicant. For most other employment-based visa categories, the petition and supporting documentation must be submitted by the potential employer. The reviewers believe INS should require information from independently verifiable sources. The reviewers also stated that the documents should be current. They said that sometimes the sponsoring organizations submit copies of their original tax-exemption form, which may no longer be valid.

A related issue raised by State's overseas posts concerns the definition of a "religious worker." They believe that the definition of religious worker is too broad, making the religious worker visa program an attractive vehicle for fraud and abuse. According to the survey, posts sometimes struggled with what they considered to be the "marginal" nature of some of the religious positions used by the applicants. A common sentiment was that almost anyone involved with a church, aside from those occupations that

were not intended to be covered by the 1990 religious worker visa legislation, for example, maintenance and cleaning staff, could qualify as a religious worker.

INS Is Considering Steps to Address the Problems

INS is developing a number of initiatives to improve its visa screening process and to detect and deter fraud. Most of these initiatives are focused on requiring petitions to include more comprehensive information to allow reviewers to make better informed decisions. Some of the service centers are using the capabilities of commercial software to enhance their ability to identify patterns and trends that may indicate fraud. State officials said they would support INS' efforts to increase evidentiary standards. Further, State is consulting with the Internal Revenue Service and the Department of Labor to develop more comprehensive information on religious occupations and organizations to help the overseas posts better understand the definition of "religious worker" and "traditional" religious functions.

Full-time Work Requirement

INS is in the process of implementing a proposed regulatory change to expressly require that the prior work experience specified for immigrant religious worker visa applicants be full-time work.¹¹ The proposed rule also states that the documentation supporting an applicant's petition must indicate that the religious worker will be working for the religious organization in the United States on a full-time basis. INS officials stated that INS is changing the regulation to address the problem of individuals doing part-time voluntary work for a religious organization while working full-time in a secular occupation. They said an applicant's ability to demonstrate 2 years of prior full-time, paid religious work experience is a good indication that the individual is a committed religious worker. They also believe such experience is a good indicator that the individual will be doing full-time religious work for which the organization will pay a salary. The proposed changes were initially published for comment in June 1995. According to INS, it plans to finalize the regulatory change in October 1999.

Additional Documentary Requirements

INS is also considering revising its requirements for the documents that must be initially submitted by the petitioner for an immigrant visa. Such documents could include pay stubs to show that the worker was compensated for full-time work and bank statements to demonstrate that

¹¹As previously mentioned, current law requires applicants to have been performing religious work continuously for at least 2 years before filing their petitions and that they are to work for the requesting organization once they enter the United States.

the organizations have sufficient financial resources to support their worker or workers. INS has the authority to ask for additional evidence to verify information in the petitions, and some INS reviewers will defer making a final decision until the organization furnishes this type of supplemental information. The suggested change involving additional documentation would increase the amount of information that all organizations must initially submit and that all adjudicators would use to review petitions. By initially requiring more specific documents and by clarifying the full-time religious work requirements, INS may also reduce the number of filings by unqualified applicants.

INS has no timetable for implementing the changes to the requirements for supporting documents. However, INS officials stated that they might revise the documentary requirements after the agency redrafts or finalizes its proposed rule change on the full-time work experience requirement. According to a State official, State would participate in any changes to the requirements for immigrant visas and publish visa regulations jointly with INS. He said that, if appropriate, State would revise its documentary requirements for nonimmigrant visas to correspond with INS' suggested revisions for immigrant visas.

Improved Access to INS Data Can Help Verify Eligibility

Until recently, reviewers could not quickly and efficiently determine how many filings had been made by a petitioning organization. As previously discussed, organizations petitioning for numbers of workers that appear to be inconsistent with the organization's membership size and financial resources to support the workers sometimes indicates fraud. However, until a pattern had been identified, the reviewers could not know if the petitions were potentially fraudulent. For example, one organization currently under investigation had 37 petitions approved in fiscal year 1996 and 76 petitions approved in fiscal year 1997 before the pattern was detected. While all service centers now have the capability to identify multiple filers, the California and Vermont Service Centers have developed their own systems using commercial off-the-shelf software (Microsoft SQL for California and Oracle and Access for Vermont), which they believe provides more efficient inquiry and reporting capability than the system provided by INS headquarters. In addition, the two service centers are in the process of consolidating their databases so that they can share data.

Views of Religious Organizations

We visited 12 religious organizations in California, New York, Maryland, and the District of Columbia to discuss their experience with the religious worker visa program. The religious organizations generally believed that

the program met their needs. For example, several of the organizations use the program to meet the needs of growing ethnic congregations. One church with 7,000 members uses the program to provide workers to minister to its separate Filipino, Korean, Hispanic, and French- and English-speaking African congregations. A religious organization with a worldwide membership uses the program to recruit native speakers familiar with the religion to serve as religious translators and broadcasters. Another religious organization with 3 million members in more than 120 countries uses nonimmigrant religious workers to participate in church-sponsored community service programs.

We asked representatives of the organizations for their opinions of INS' proposed changes to the program. Of the seven commenting on the full-time work experience requirement, four stated that the proposal would not negatively affect their organization, because the majority of the applicants they sponsor for immigrant religious worker visas have already been serving in full-time capacities. However, three expressed reservations. For example, the representative of one religious organization stated that the requirement might adversely affect applicants who work for congregations in which ministerial duties are shared. The representative of another organization stated that the full-time work experience requirement could be problematic for those engaged in religious vocations if proof of paid full-time work was required, because some individuals are often not paid a salary. He said the requirement could also cause problems for some individuals who perform their religious duties part-time while studying for the priesthood or ministry.

Three of the four religious organizations commenting on the proposed change in documentary evidence requirements stated that the change would not pose a problem. However, the one opposed to the proposed change pointed out that INS already has the discretion to ask for additional documents when required and does not believe that religious employers and applicants should routinely be required to assume additional documentary burdens. Some representatives also stated that INS should avoid the appearance of deciding for a religious organization what constitutes religious work.

In addition to asking for their opinions on the potential modifications proposed by INS, we also asked the religious organizations for their suggestions for improving the program. Three of the organizations suggested making the special immigrant religious worker visa category permanent. The representative of one of the religious organizations said

this would eliminate the glut of petitions that are filed before the "sunset" date. One organization that was familiar with student visas suggested that a sponsoring organization could submit to INS an annual status report on each of its nonimmigrant religious workers, much like academic institutions that must annually certify the status of foreign students. Another organization suggested that INS provide some materials concerning the religious worker visa program in some foreign languages to help ensure that organizations fully understand the regulations and requirements of the program.

Conclusion

Both INS and State are attempting to balance the need to screen out unqualified applicants with the religious worker visa program's original purpose of facilitating the entry of qualified religious workers. The program modifications that INS is undertaking or plans to undertake to verify the accuracy of petitions for immigrant religious worker visas are reasonable steps to improve program integrity. If implemented, the modifications should help to better screen visa applicants and religious organizations.

Agency Comments

In oral comments on a draft of this report, INS and State concurred with the report's findings and conclusions. INS noted that its planned regulatory change and other steps underway to improve its screening process should help reduce the incidence of fraud. INS and State also provided technical comments, which we have incorporated as appropriate.

Scope and Methodology

To determine whether INS and State have data on any fraud in the religious worker visa program and to determine the nature of any abuse, we met with INS and State headquarters officials and visited three of the four INS service centers responsible for processing and approving religious worker visas. We also analyzed information from about 700 religious worker visa petitions denied by the California Service Center between January 1, 1996, and August 18, 1997, and data from about 83 responses to a State Department survey of 100 of its overseas posts in February 1998. We met with officials at INS' New York District Office responsible for interviewing visa applicants, and other officials to discuss INS' efforts to identify patterns and trends in the use of the program that could indicate fraud. We also met with officials of State's Fraud Prevention Program and Office of Diplomatic Security to discuss State's efforts to identify and investigate

religious worker visa fraud. In addition, we met with fraud investigators from INS' Los Angeles District Office to discuss specific fraud investigations and INS' processes for accepting, investigating, and resolving fraud cases.

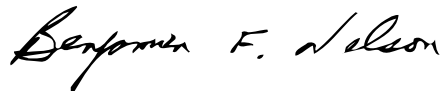
We interviewed INS and State officials to discuss their agencies' processes and procedures for determining if visa applicants and sponsoring organizations met program requirements. We reviewed the relevant law and related legislative history, the INS regulations, State's Foreign Affairs Manual, advisory cables to the overseas posts, and other guidance to determine what criteria the agencies use to judge petitions and applications. We observed the process for reviewing and approving visa petitions at three INS service centers in California, Texas, and Vermont and discussed with service center staff how petitions are evaluated and the limitations of the process. We also queried by telephone consular posts in India, Korea, Mexico, and the Philippines about their processes and procedures for reviewing and approving visa applications. We chose those posts because they process relatively large numbers of applications for nonimmigrant religious worker visas.

To identify any steps INS and State had taken or planned to take to address identified problems, we met with INS and State officials. We discussed the potential effect of any proposed changes with representatives of the U.S. Catholic Conference, the General Conference of the Seventh-Day Adventist Church, the Christian Science Church, Agudath Israel of America, and the Lutheran Immigration and Refugee Service. We selected these organizations because they have testified in support of the special visa for religious workers or are otherwise considered knowledgeable about the program. We also discussed the proposed changes with churches and other religious institutions that use the program. We selected these organizations by extracting information from the California and Vermont Service Centers' databases of religious worker visa petitions approved in fiscal year 1997 to identify the churches using the program. We selected an illustrative sample of large, medium, and small users based on the number of each organization's approved petitions. We interviewed representatives of seven churches from this group.

We conducted our review from February 1998 to November 1998 in accordance with generally accepted government auditing standards.

We are sending copies of this report to interested congressional committees. We are also sending copies to the Honorable Madeleine Albright, Secretary of State, and the Honorable Doris Meissner, Commissioner, INS. We will also make copies available to others upon request.

Please contact me at (202) 512-4128 if you or any of your staff have any questions concerning this report. The major contributors to this report are listed in appendix II.



Benjamin F. Nelson, Director
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Contents

Letter	1
Appendix I Religious Worker Visas—Numbers Issued and Recipients' Countries of Origin	16
Appendix II Major Contributors to This Report	18
Figures	
Immigrant and Nonimmigrant Religious Worker Visas Issued Since Fiscal Year 1992	16
Major Countries of Origin for Immigrant and Nonimmigrant Religious Worker Visa Recipients in Fiscal Year 1998	17

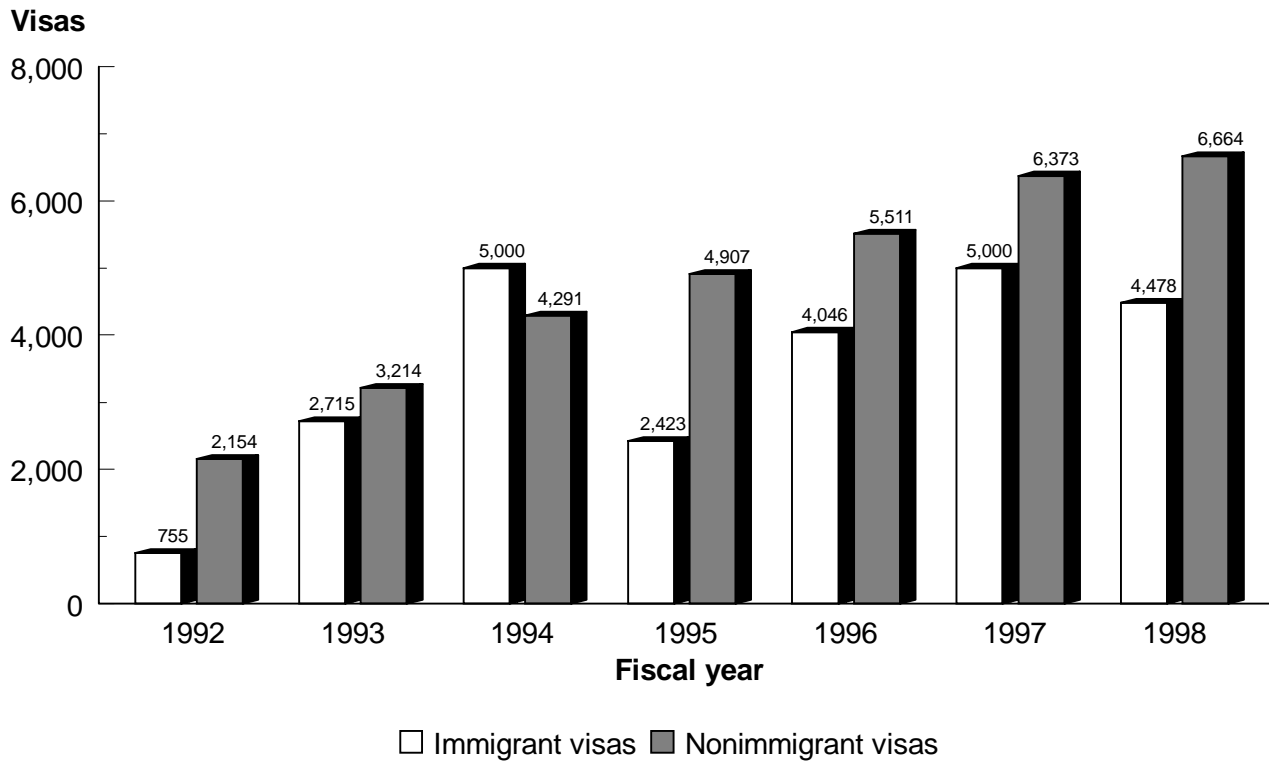
Abbreviations

INS Immigration and Naturalization Service

Religious Worker Visas—Numbers Issued and Recipients' Countries of Origin

This appendix shows the number of religious worker visas issued from fiscal years 1992 to 1998 and the major countries of origin of visa recipients in fiscal year 1998. Figure I.1 shows that the number of immigrant religious worker visas issued since fiscal year 1992 has fluctuated, reaching the annual limit of 5,000 in fiscal years 1994 and 1997, when the program was scheduled to expire. Meanwhile, issuances of nonimmigrant visas have steadily increased since fiscal year 1992. Figure I.2 shows that South Korea and India were the top countries of origin of immigrant and nonimmigrant religious worker visas, respectively.

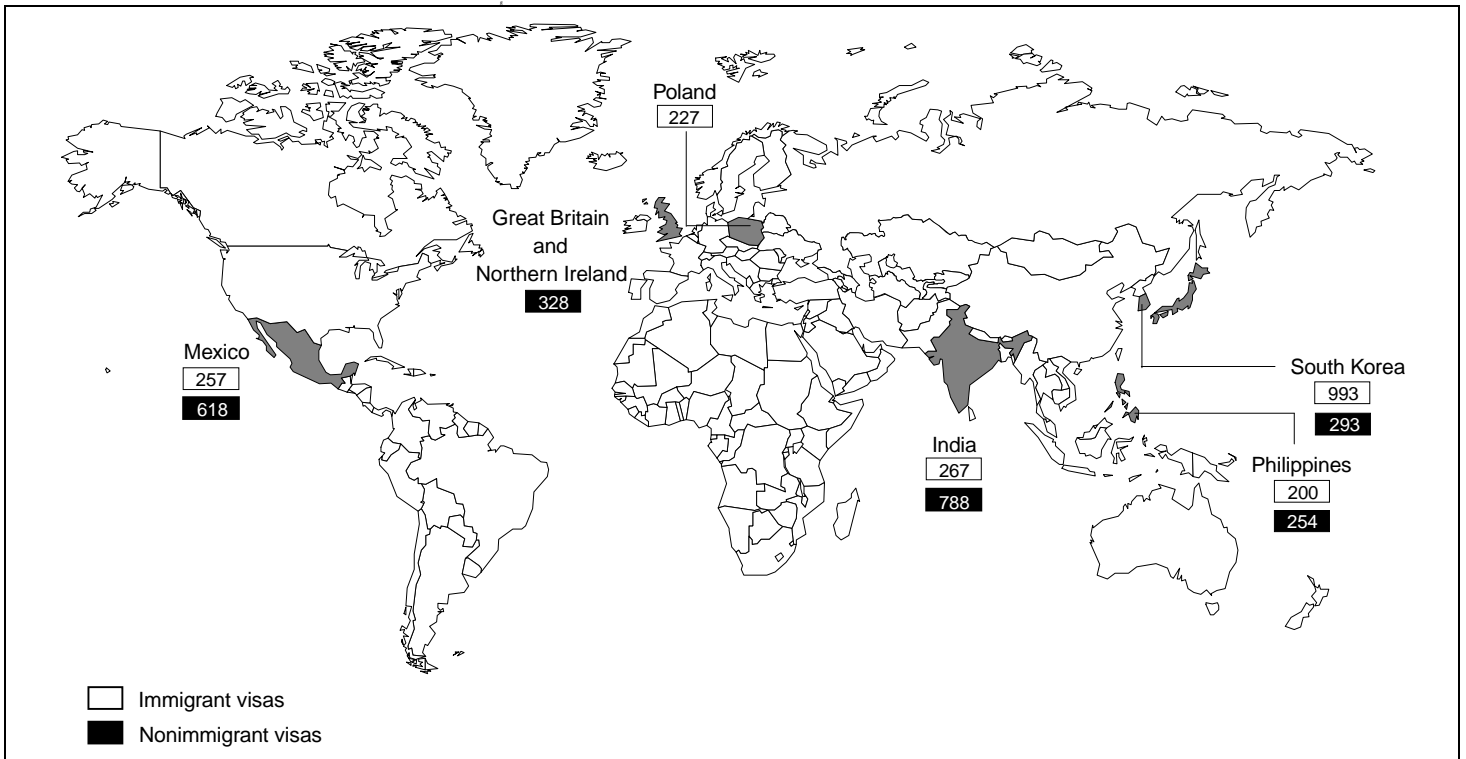
Figure I.1: Immigrant and Nonimmigrant Religious Worker Visas Issued Since Fiscal Year 1992



Source: State Department Bureau of Consular Affairs.

Appendix I
Religious Worker Visas—Numbers Issued and
Recipients' Countries of Origin

Figure I.2: Major Countries of Origin for Immigrant and Nonimmigrant Religious Worker Visa Recipients in Fiscal Year 1998



Source: State Department Bureau of Consular Affairs.

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