

exception of ministers) actually enter the United States before October 1, 1994 (now October 1, 1997). In other words, in order to immigrate under the special immigrant religious worker category, aliens who are not ministers must have a petition approved on their behalf and either enter the United States as an immigrant or adjust their status to permanent residence before October 1, 1997.

For the sake of clarification, the Service published an interim regulation in the Federal Register which amended 8 CFR 204.5(m)(1) to provide specifically that aliens must obtain permanent resident status through immigration or adjustment of status on or before September 30, 1994, to qualify under the special immigrant religious worker category. See 59 FR 27228-29, dated May 26, 1994. The public was provided with a 30-day period, ending on June 27, 1994, to comment on the interim regulation. The Service received one comment.

#### Discussion of the Comment

The commenter stated that the Service misinterpreted the term "seek to enter the United States before October 1, 1994" in section 101(a)(27)(C)(ii) (II) and (III) of the Act. The commenter contended that the term "seek to enter" means that the religious worker initiate the immigration process before October 1, 1994. The comment urged the Service to allow special immigrant religious workers to meet the cut-off date by filing a petition before October 1, 1994. In the alternative, the commenter stated that the October 1, 1994, cut-off date could be met by applying for an immigrant visa at a U.S. consulate or by applying for adjustment of status under section 245 of the Act before October 1, 1994.

The Service disagrees with the commenter's interpretation of the statutory language. The language of section 101(a)(27)(C)(ii) of the Act requires that a qualifying religious worker seek to enter the United States before October 1, 1997. Section 101(a)(13) of the Act provides that an "entry" means any coming of an alien into the United States." Reading section 101(a)(27)(C)(ii) of the Act in conjunction with section 101(a)(13) of the Act, it is clear that not only must the religious worker apply for admission to the United States as an immigrant before October 1, 1997, but he or she must actually seek to "come into," i.e., arrive in the United States with an immigrant visa before October 1, 1997.

As stated in the preamble to the interim rule, a petition must be filed with the Service to establish the alien's eligibility for special immigrant status

as a religious worker. See section 204(a)(1)(E) of the Act. At this initial step, an alien is merely seeking to be found classifiable under section 203(b)(4) of the Act. After the Service approves a petition, the next step in this process is an application for an immigrant visa at a U.S. consulate. See section 222 of the Act. After the consulate issues an immigrant visa, the alien must present himself or herself at a Port-of-Entry and apply to enter the United States. See section 221(e) of the Act. It is only at this step in the process that the alien is deemed to be seeking to enter the United States as a special immigrant. Further, it is only when the alien is actually admitted to the United States that he or she affects an "entry." The term "seek to enter before October 1, 1997," therefore, refers only to an alien who is applying for admission to the United States as an immigrant before that date.

This reading of section 101(a)(27)(C) of the Act is consistent with the statutory scheme of the Act. Congress, by using the language "seek to enter before October 1, 1997," evidenced its intent to establish the cut-off date as the time the alien actually enters the United States as an immigrant. Had Congress intended to set the cut-off date as the date a petition was filed with the Service on behalf of the alien religious worker or the date the alien applied for adjustment of status, it would have specifically provided so. Throughout the Act, Congress has enacted provisions using cut-off dates based on the time of application for permanent residence rather than entry. For example, the special immigrant category for certain employees of international organizations and their families requires applicants to apply for an immigrant visa or adjustment of status before a certain date. See section 101(a)(27)(I) of the Act. In addition, the Chinese Student Protection Act of 1992, Pub. L. 102-404, provides that a qualified alien must apply for adjustment of status during a 1-year application period, beginning July 1, 1993. See also section 2(d) of the Immigration Nursing Relief Act of 1989, Pub. L. 101-238.

This interpretation, and consequently the interim rule, is consistent with the Department of State regulation which provides that an immigrant visa issued on behalf of a special immigrant religious worker, other than a minister, shall be valid no later than September 30, 1994. See 22 CFR 42.32(d)(1)(ii). The Service notes that, although the Department of State's regulation erroneously makes reference to a "religious worker" as defined in 8 CFR 204.5(l), rather than 8 CFR 204.5(m), it

is clear that this provision can only refer to an alien described in section 101(a)(27)(C) of the Act, other than a minister of religion.

Since the sole amendment to section 101(a)(27)(C)(ii) of the Act made by the INTCA was the extension of the sunset date to October 1, 1997, the final regulation will provide that religious workers, other than ministers, must obtain permanent resident status through immigration or adjustment of status before October 1, 1997, in order to immigrate as special immigrant religious workers.

#### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies a statutory deadline for a limited number of aliens to become special immigrant religious workers.

#### Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

#### Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

#### List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, the interim rule amending 8 CFR part 204 which was