



March 8, 2012

PM-602-0057

Policy Memorandum

SUBJECT: Procedures for Calculating the Maximum Period of Stay for R-1 Nonimmigrants
(AFM Update AD12-03)

Purpose

This memorandum provides instruction to Immigration Service Officers who adjudicate R-1 nonimmigrant petitions for aliens who are coming to the United States temporarily to perform religious work, and their dependents. This memorandum outlines the procedure to be used for recapturing time spent outside the United States by R-1 nonimmigrants when seeking an extension of their R nonimmigrant status.¹ This guidance applies to all R-1 petitions seeking to recapture time that are currently pending with USCIS or to new petitions filed on or after the date of this memorandum.

Background

The Religious Worker (R-1) nonimmigrant classification is for aliens seeking to enter the United States for a period not to exceed 5 years solely to work as a minister or in a qualifying religious occupation or vocation.² In calculating the 5-year maximum period of stay, USCIS has not subtracted time in which the R-1 religious worker was traveling or residing outside of the United States following his or her initial admission in R-1 status.

Rationale for Updated Field Guidance

Certain nonimmigrants who have spent the maximum period of stay authorized by their nonimmigrant classification are, by statute, prohibited from having a new petition in the same status filed on their behalf until they have remained outside of the United States for a specific period of time (also known as a “limitation on admission” or “limitation on total stay”).³

¹ The term recapture in this memo is used as a short-hand for the period of time spent outside the United States that an alien seeks to have subtracted from their maximum period of stay in R-1 status, as governed by INA 101(a)(15)(R)(ii), in order to have that period of time added back (i.e., “recaptured”) when the alien requests an extension of their R-1 status.

² See INA 101(a)(15)(R)(ii) (referring to religious work described in INA 101(a)(27)(C)(ii)). The beneficiary of an R-1 petition must have been a member of a religious denomination having a bona fide nonprofit religious organization in the United States for at least 2 years immediately preceding the filing of the I-129 petition. See *id.*

³ See, e.g., H-1B limitation on admission (1 year), see 8 CFR 214.2(h)(13)(iii); L-1 limitation on period of stay (1 year), see 8 CFR 214.2(l)(12); R-1 limitation on total stay (1 year), see 8 CFR 214.2(r)(6).

Currently, USCIS policy guidance provides that H-1B and L-1 nonimmigrant aliens, and their dependents, may recapture time spent outside of the United States when calculating their maximum period of authorized stay.⁴ The policy of allowing recapture is designed to permit a qualifying nonimmigrant to spend the maximum permitted period of time allowed by his or her classification in the United States before he or she is required to spend a specific period outside of the United States in order to file a new petition for the same status.

USCIS has determined that extending the recapture policy to the R-1 nonimmigrant classification is appropriate, and that such a policy is consistent with R-1 statutory and regulatory language and the purpose and intent of the R-1 visa classification, as explained below. USCIS has further determined that the spouse and minor child of a principal alien who recaptures periods of time spent outside of the United States towards an extension of R-1 status may receive periods of R-2 stay coextensive with that of the principal alien.⁵

A. Recapture is Consistent with R-1 Statute and Regulations Describing Limitation on Stay.

Section 101(a)(15)(R) of the Immigration and Nationality Act (INA) states that a religious worker may “enter the United States for a period not to exceed 5 years.”⁶ The regulations provide that a religious worker “may be admitted as an R-1 alien or changed to R-1 status for an initial period of up to 30 months from date of initial admission.”⁷ The terms “admission” and “admitted” are statutorily defined as the “lawful entry of an alien into the United States after inspection and authorization by an immigration officer.”⁸ The R-1 status may then be extended for an additional 30 months “provided the total period of time spent in R-1 status” does not exceed the maximum 5 years.⁹ Furthermore, “an alien who has spent five years in the United States in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year.”¹⁰ USCIS has determined that the R-1 regulations permit an interpretation that only time actually spent in the United States in R-1 status to be counted towards the maximum 5 years of authorized stay.¹¹

⁴ See Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants (AFM Update AD 05-21), Interoffice Memorandum from Michael Aytes, USCIS Acting Associate Director of Domestic Operations (Oct 21, 2005).

⁵ See 8 CFR 214.2(r)(4)(ii).

⁶ See also 8 CFR 214.2(r)(1).

⁷ See 8 CFR 214.2(r)(4)(i).

⁸ See INA 101(a)(13)(A).

⁹ See 8 CFR 214.2(r)(5) (extension of stay or readmission).

¹⁰ See 8 CFR 214.2(r)(6) (limitation on total stay).

¹¹ An individual may be permitted to recapture time spent outside of the United States regardless of whether they are currently in the United States or abroad and regardless of whether they currently hold R-1 status. An individual who has remained outside of the United States for at least one year immediately prior to the filing an R-1 petition is eligible to seek a new 5 year period of stay as an R-1.

B. Recapture is Consistent with the Purpose and Intent of the R-1 Classification.

An alien may be admitted as an R-1 nonimmigrant “for the purpose of conducting the activities of a religious worker for a period not to exceed five years.”¹² An R-1 nonimmigrant may enter the United States after the date reflected on the approved petition. He or she, however, may have to leave the United States during the period of stay reflected on the approved petition for personal or professional purposes. It is not always the case that the petitioning organization will cease to need the religious worker at exactly the same date as the expiration of the period of stay that was initially requested on the petition. For this reason, it would benefit both the petitioning religious organization and the R-1 beneficiary if the petitioner is able to request that the alien beneficiary’s stay be extended to “recapture” any time the alien spent outside of the United States during the approved period of stay.¹³

Field Guidance

USCIS officers who adjudicate R-1 nonimmigrant petitions are directed to follow the guidance provided in this memorandum which states that any days spent outside of the United States during the validity period of an R-1 petition will not be counted toward the maximum period of stay in the United States in R-1 status, provided that the alien remains eligible for the classification and is able to submit independent documentary evidence establishing that he or she was in fact physically outside of the United States during the day(s) for which the alien is seeking recapture.¹⁴ The burden of proof rests with the petitioner, who files a petition with USCIS on behalf of the R-1 alien, to establish the alien’s eligibility for any recapture benefits. This memorandum supersedes any previous guidance on requests pertaining to “recapturing” time for nonimmigrant workers admitted pursuant to INA § 101(a)(15)(R).

AFM Update

The Adjudicator’s Field Manual is revised as follows:

1. Chapter 34.5(m) of the AFM is revised to read as follows:

(m) Limitation on total stay.

An alien who has spent 5 years in the United States in R-1 nonimmigrant status may not be readmitted to or receive an extension of stay in the United States under the R nonimmigrant

¹² See 8 CFR 214.2(r)(1).

¹³ By contrast, the extension of a recapture policy to certain other nonimmigrant visa classifications would frustrate the intent and purpose of the classification, such as visa classifications which require a fixed schedule or evidence of a program itinerary.

¹⁴ A “day” is construed to mean a full 24 hour calendar day. Partial days spent outside of the United States (e.g., an afternoon trip to Canada) will not be recaptured and added back to the total maximum period of stay.

classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year, except for an R-1 nonimmigrant who:

(1) Is Eligible to Recapture Time Spent Outside the United States During the R-1 Validity Period. A religious worker “may be approved for temporary admission to the United States” for a period not to exceed 5 years. 8 CFR 214.2(r)(1); see *also* INA 101(a)(15)(R). A religious worker “may be admitted as an R-1 alien or changed to R-1 status for an initial period of up to 30 months from date of initial admission.” 8 CFR 214.2(r)(4). The terms “admission” and “admitted” are defined as the “lawful entry of an alien into the United States after inspection and authorization by an immigration officer.” INA 101(a)(13)(A). The authorized period of stay may be extended for an additional 30 months “provided the total period of time spent in R-1 status” does not exceed the maximum 5 years. 8 CFR 214.2(r)(5). Moreover, “an alien who has spent five years in the United States” in R-1 status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. 8 CFR 214.2(r)(6). As a matter of policy, USCIS will count *only time spent physically in the United States* in valid R-1 status toward the 5-year maximum period of stay. When requesting an extension, the petitioner, on behalf of the R-1 nonimmigrant, may request that full calendar days spent outside the United States during the period of petition validity be recaptured and added back to his or her total maximum period of stay, regardless of whether they are currently in the United States or abroad and regardless of whether they currently hold R-1 status.

It is the burden of the petitioner, on behalf of the alien, to demonstrate continuing eligibility for the classification and that the alien is entitled to recapture time with appropriate evidence. The reason for the absence is not relevant to whether the time may be recaptured. Any trip of at least one 24-hour calendar day outside the United States for any purpose, personal or professional, can be recaptured.

(A) Evidence. The burden of proof remains with the R-1 petitioner, on behalf of the R-1 beneficiary, to submit evidence documenting periods of physical presence outside the United States when seeking an extension of petition validity and extension of stay as an R-1 nonimmigrant. The R-1 nonimmigrant is in the best position to organize and submit evidence of his or her departures from and readmissions to the United States. While a summary and/or charts of travel are often submitted to facilitate review of the accompanying documentation, independent documentary evidence (e.g., photocopies of passport stamps, I-94 arrival/departure cards, and/or plane tickets) establishing that the alien was outside the United States during all of the days, weeks, or months that he or she seeks to recapture is always required.

The fact that the burden may not be met for some claimed periods generally has no bearing on other claimed periods for which the burden has been met. Any periods for which the burden has been met may be added to the eligible period of admission upon approval of the application for extension of status. An alien may not be granted an extension of stay for periods that are not supported by independent documentary evidence. It is not necessary to issue a Request for Evidence (RFE) for any claimed periods unsupported by independent documentary evidence.

(B) Applicability to R-2 Dependents. The status of an R-2 dependent of a principal R-1 nonimmigrant is subject to the same period of admission and limitations as the principal alien. For example, if an R-1 nonimmigrant is able to recapture a two-week missionary trip abroad, then his or her R-2 dependents, if seeking an extension of stay, should be given an extension of stay up to the new expiration of the R-1 alien's period of stay.

(2) Is Eligible for a Seasonal or Intermittent Employment Exception.

(A) An R-1 nonimmigrant is eligible for this exception by demonstrating that he or she:

- Did not reside continually in the United States and that his or her employment in the United States was seasonal or intermittent or was for an aggregate of 6 months or less per year.
- Resides abroad and regularly commutes to the United States to engage in part-time employment.

(B) Evidence. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as: I-94 arrival/departure records, transcripts of processed income tax returns, and records of employment abroad.

2. The AFM Transmittal Memoranda button is revised by adding in numerical order a new entry to read:

AD 12-03 [INSERT DATE]	Chapter 34.5(m)	Provides guidance on recapturing time spent outside the United States during the 5-year period of authorized stay.
------------------------	-----------------	--