

Here is a report on a little-known aspect of immigration law: the 'minister of religion' clause [Section 101 (a) (27) (C)]. Jim Dorcy, formerly with the Immigration and Naturalization Service, is senior government relations associate at the Federation for American Immigration Reform (FAIR) in Washington, DC.

The 'Minister of Religion' Clause

A Little Known Section of Immigration Law

By Jim Dorcy

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

This country's immigration laws exempt ministers of religion and certain religious workers from numerical immigration limits. Does this unusual exemption encroach on the First Amendment prohibition against mixing state and religion? A careful look at the issue is worthwhile.

Prior to the 1990 Immigration Act, only validated "ministers of religion" received special consideration for any kind of immigration benefit. The definition of "minister of religion" was narrowly defined. In order to qualify, a person had to have been "ordained" in a formal rite of ordination, and his or her services had to be required or requested by the church body or organization for which the minister would work in the United States.

Under this narrow concept, church workers who were not ordained ministers did not qualify. Nuns, lay brothers (in the Catholic Church), Jewish cantors, lay missionaries, catechists, and other support-role church workers did not receive any special benefits. Church organizations were, however, free to petition for them as third or sixth preference labor-certified workers. The 1990 Immigration Act changed, at least temporarily, the classes of church workers covered, expanding consideration beyond "ministers of religion."

The 1990 law is the most comprehensive immigration bill since 1952. In the construction and debate of that legislation we find a clue to what the religious organizations have in mind for future immigration legislation. Lobbyists representing churches and church-related organizations swarmed over Capitol Hill and joined in a powerful coalition with business, labor, ethnic and other interests.

The churches persuaded Congressman Bruce Morrison (D-CT), then chairman of the House Immigration Subcommittee, to write into the draft of the House version a provision that would have exempted from limitation virtually any alien who was merely the member of a church or church organization. In this version there were two basic qualifications for the exemption: the alien had to be a

member for at least one year of the church requesting immigration, and the church or church-affiliated organization had to inform the government that it desired the alien's presence in the U.S. to work for the church or organization. Although this language did not make it to the final version, it did foster a compromise which expanded the category of religious immigrants from just ministers of religion to include other church workers.

A new "R" category of nonimmigrant allows aliens to come temporarily to the U.S., for up to five years, (1) to carry on the vocation of minister of a religion, (2) to work in a *professional* capacity for a religious organization, or (3) to work in a *religious vocation* for a religious organization or an affiliate of a religious organization. The latter two categories are open only until October 1, 1994, and the organization must make a specific request for a qualifying alien's services. In order to qualify, an alien must have worked in the vocation, professional work or other work for at least two years immediately prior to applying. The requirements and limitations for permanent immigrant religious workers are identical to those applying to nonimmigrants. There are *no numerical limitations* on either nonimmigrant or immigrant religious workers.

In the original language of H.R. 4300, the religious worker category would have been broadened far beyond what it has been. No sunset was provided for the non-ministerial categories, either. A number of religious denominations, including Catholics, Protestants, Moslems, Hindus, Mormons, and Jehovah's Witnesses were actively lobbying for liberalization of what constitutes a religious worker and the terms of admission for such workers. In the lobbying efforts of the Federation for American Immigration Reform (FAIR), we pointed out that liberalization as it had been proposed would open the door to massive abuse and allow just about anyone who claims to practice a religion to qualify. The final product was very much toned down from original proposals, while only temporarily allowing some expansion and liberalization. We will undoubtedly see a number of the religious denominations and organizations lobbying for extension of these provisions as October 1, 1994 approaches. We may

also see some argument for liberalization at the same time. For this reason, most denominations are being rather circumspect in their importation of religious workers.

The Catholic Church was a key player in lobbying for expanding these categories. It will continue to lobby for extension and expansion in the future. According to some of my sources in the INS, there does not seem to be any kind of great rush to take too much advantage of the new law and its provisions by the mainstream religions and religious organizations, including the Catholics. Some concerns have been raised, however, over applications being made by the less orthodox organizations such as the Unification Church, which seems to be the only church trying to "expand the envelope" in the religious categories. It seems logical that the Catholic Church would try to replenish its clerical ranks here in the U.S. by importing replacements from abroad. For several years after Vatican II, the Catholic Church in the U.S. lost a disproportionate number of its religious workers and clergy because of celibacy-related departures. Now, however, much of the rest of the world has caught up to the U.S., and the excess of clerical personnel that once existed in places like Ireland and Italy are pretty much a thing of the past. Worldwide, the Roman Church is suffering from an aging, unreplenished religious and clergy. The likelihood of a mass exodus from other countries to fill a void here is very much diminished because the religious vocations shortage has become so wide spread.

During the debate over the 1990 legislation, it was apparent that the Catholic Church wanted to expand the religious immigration categories to cover lay teachers for its schools. Few teachers from either the Philippines or Latin America can meet the two-year requirement of the law, so the expansion of the categories was not broad enough to encompass the lay teachers. Catholic schools notoriously pay below the wage scales set by public schools, and they are in need of Spanish-speaking teachers to teach children of recent immigrants from Mexico and other Spanish-speaking countries. Presumably, teachers from both sources would work for less than U.S.-educated teachers. Most educated Filipinos speak at least minimal English, and Latin American teachers obviously speak Spanish.

There are no celibacy requirements for lay teachers. They would be able to come here with families, many with very large families. Since, under the present rules, teachers would come under the numerical limits and labor certification requirements, only relatively few would be able to qualify. We can anticipate continuing pressure by church lobbyists to extend and broaden the religious worker categories beyond 1994 and to include lay teachers.

Another aspect of what was developing during the debates toward the 1990 Act was the prospect of broadening the religious categories and making mere church membership, and working in loosely-defined jobs, a qualification for entrance. Many churches, both Catholic and Protestant, could view such broadening as a possible 'sanctuary movement' avenue for legally bringing in 'oppressed' aliens by declaring them to be 'church workers.' This is an area that will be a continuing battle ground in the future.

Since there would be no limits nor labor certification requirements, we can anticipate great abuse of such a broadened category. Religious and quasi-religious organizations which now participate actively in alien smuggling would have little compunction to certify unqualified people as teachers which would allow them to immigrate legally in lieu of taking the risks involved in entering the U.S. illegally.

In some minds there is a serious question as to whether this whole program does not contravene the "establishment" clause of the First Amendment. ■