U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Domestic Operations
Washington, DC 20529

U.S. Citizenship and Immigration Services

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Memorandum

To: SERVICE CENTER DIRECTORS
REGIONAL DIRECTORS
DISTRICT DIRECTORS
FIELD OFFICE DIRECTORS
NATIONAL BENEFIT CENTER DIRECTOR

From: Donald Neufeld
Acting Associate Director

Date: August 5, 2009

Subject: Clarifying Guidance on the Implementation of the District Court's Order in *Ruiz-Diaz v. United States,* No. C07-1881RSL (W.D. Wash. June 11, 2009)

1. Purpose

This memorandum clarifies and supersedes the guidance provided in the memorandum of June 25, 2009: "Implementation of the District Court's Order in *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009). Section 3A of this memorandum addresses who is an eligible applicant under Ruiz-Diaz and Section 3B clarifies periods of unlawful presence, unlawful status and unauthorized employment.

2. Background

This class action lawsuit challenged implementation by United States Citizenship and Immigration Services (USCIS) of the concurrent filing regulation at 8 C.F.R. § 245.2(a)(2)(i)(B) to individuals seeking classification as religious workers and their ability to concurrently file a Petition for Amerasian, Widower, or Special Immigrant (Form I-360) with an Application to Register Permanent Residence or Adjust Status (Form I-485).

Finding that the concurrent filing regulation at 8 C.F.R. § 245.2(a)(2)(i)(B) was invalid and unenforceable as applied to religious workers, the district court directed USCIS to accept properly filed Forms I-360, Forms I-485, and Applications for Employment Authorization (Form

I-765)[1] from certain religious workers who may have been affected by USCIS implementation of the regulation.

The district court directed USCIS to issue a notice of its order to: (1) each person or entity who has a pending I-360 visa petition; (2) a list of religious, nongovernmental, and community organizations as maintained by USCIS: and (3) post such notice on the USCIS webpage at www.uscis.gov. The required notices have been sent to the above referenced groups and posted on the webpage in addition to being attached to this implementing guidance.

3. Field Guidance

Effective immediately, USCIS personnel are directed to comply with the following instructions summarized below.

A. Eligible Applicants

Principal Aliens

The district court's order pertains to applicants who file or previously filed for adjustment of status, whether or not submitted concurrently with, or subsequent to, the proper filing of a Form I-360 for classification as a religious worker. Because the district court invalidated the concurrent filing regulations as applied to religious workers, individuals who sought to concurrently file Forms I-360 and I-485 on or after July 31, 2002,[2] are permitted to re-file their Forms I-360[3], I-485, and I-765 with the California Service Center. To give effect to the district court's order pertaining to retroactive employment authorization, USCIS will not count the period of unauthorized employment from the date of the original submission of the Form I-360 or November 21, 2007, whichever is earlier, once the applicant files the previously rejected Forms I-485 and I-765 with the Form I-360. USCIS can only issue prospective employment authorization cards (EAD) upon receipt of a properly completed Form I-765.[4]

Spouses and Children

Similarly, the district court's order also permits spouses and children who are the beneficiaries of properly filed Forms I-360 by religious workers to be accorded the same status and order of consideration as the principal, unless the spouse and child are already entitled to another immigrant status and immediate issuance of a visa under section 203(a), (b), or (c) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1153(a), (b), or (c). Like the principal,

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[1] Applicants may also file an Application for Travel Document, Form I-131, as long as they are eligible and properly file the application.

[2] Legacy Immigration and Naturalization Service published an interim rule on July 31, 2002, which amended the regulations at 8 C.F.R. § 245.2(a)(2)(i)(B) introducing concurrent filing for certain categories. *See* 67 FR 49561.

[3] If the I-360 has been approved or remains pending with USCIS, the applicant does not need to re-file the I-360 with the I-485 and/or I-765 applications. Instead, those applicants can re-file the I-485 and/or I-765 without refilling the I-360.

[4] Operationally, USCIS can not issue retroactive EADs.

spouses and children are also subject to the same requirements for adjustment eligibility, including admissibility.

B. Provisions Regarding Unlawful Presence and Unauthorized Work

Pursuant to the district court's order, three categories of individuals and their derivative beneficiaries (*i.e.*, a spouse or child who would qualify as a relative accompanying or following to join as a derivative of a religious worker under section 101(a)(15)(R) or as an immigrant under section 203(d) of the INA) will receive protection from the accrual of unlawful presence and from unauthorized work during periods in which an individual was not permitted to concurrently file a religious worker Form I-360-based application for adjustment of status:

(1) any alien who previously submitted a concurrently filed Form I-360 with a Form I-485 and/or Form I-765[5] but whose I-360 and/or I-485 applications were rejected pursuant to 8 C.F.R. § 245.2(a)(2)(i)(B) and who properly re-files the I-360 petition and I-485 application with appropriate fees and supporting documentation will have any period of unlawful presence and unauthorized employment that began accruing after either filing of the Form I-360 or **November, 21, 2007, whichever is earlier, tolled until September 9, 2009**, (i.e., 90 days from the date of the district court's order). Note: If the I-360 has been approved or remains pending with USCIS, the applicant does not need to re-file the I-360 with the I-485 and/or I-765 applications. Instead, those applicants may file the I-485 and/or I-765 (whether or not these applications were filed concurrently with the initial I-360) without refiling the I-360.

(2) any alien who has a Form I-360 religious worker petition **pending** with USCIS or **approved** by USCIS as of June 11, 2009, will have any period of unlawful presence and unauthorized employment that began accruing after properly filing of the Form I-360 with appropriate fees and supporting documentation, tolled **until September 9, 2009**;

(3) any alien who files a new Form I-360 religious worker petition with USCIS **on or after June 11, 2009**, will have any period of unlawful presence and unauthorized employment that began accruing after properly filing of the Form I-360 with appropriate fees and supporting documentation, **tolled until September 9, 2009**.

Persons falling in categories 1 and 2 are immediately eligible to file a Form I-485, as well as Form I-765 applications. In addition, persons falling in categories 1 and 2 who properly file a Form I-485 and Form I-765 on or before September 9, 2009, will not be ineligible for adjustment of status based on any failure to maintain lawful status, unauthorized employment, or accrual of unlawful presence that occurred after the date the Form I-360 was filed until such time as USCIS makes a final decision on their applications. All persons falling in category 3, who properly file their I-485, I-765, and/or I-360 on or after June 11, 2009, will also enjoy these protections until

[5] For those individuals who have already filed an I-485 application, they may file the I-765 separately.

September 9, 2009, and, if their applications are properly and timely filed with USCIS prior to September 9, 2009, until USCIS makes a final decision on their applications.

USCIS adjudicators should still consider any periods of unlawful presence and unauthorized work that accrued or occurred **prior to the filing** of the Form I-360 or prior to November 21, 2007, whichever is earlier, when determining an alien's eligibility for adjustment of status. If the Form I-360 was approved prior to June 11, 2009, adjudicators may not consider any periods of unlawful presence accrued after such date in the adjudication of the I-485 if the I-485 is filed prior to September 9, 2009.

Self-petitioning aliens or alien beneficiaries that believe that he/she is covered by the provisions of the court's order may re-file on his/her own behalf or have a petitioning organization re-file a Form I-360 with the I-485 and I-765 applications, with appropriate fees, prior to September 9, 2009. Affected individuals should also submit a copy of the original USCIS denial or rejection notice indicating that the case was denied or rejected solely based on the concurrent filing regulation at 8 C.F.R. § 245.2(a)(2)(i)(B).

C. New Filings

The district court's order requires USCIS to accept concurrently and *properly filed* religious worker petitions (Forms I-360), requests for employment authorization (Forms I-765), and adjustment applications (Forms I-485). However, USCIS is not prohibited from rejecting *improperly filed* applications that do not comply with the regulations at 8 CFR 103.2, 245.2(a)(3), and 274a.13 or Instructions for the Forms I-360, I-485, or I-765. Applicants must also comply with all requests for additional evidence, for appearance at interviews, and for biometrics and background or security checks pursuant to standard instructions and operating procedures for adjustment applications and requests for employment authorization.

Petitioners and/or applicants concurrently filing new I-360 petitions with the I-485 and I-765 applications, re-filing I-360 petitions that were rejected when previously filed with the I-485 and I-765 applications, or subsequently filing the I-485 and I-765 applications based on a pending Form I-360 religious worker petition must mail their petitions and applications to:

California Service Center
P.O. Box 10485
Laguna Niguel, CA 92677-1048

Applicants should annotate on the front of the envelope in clear large print "**I-360/I-485 – RUIZ-DIAZ LITIGATION**" so that the application may be routed to the proper Service Center adjudications unit.

Applicants **who have an approved Form I-360 religious worker petition** and live in Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota,

Utah, Washington, Wisconsin or Wyoming, should file the I-485 and I-765 with the Nebraska Service Center.

Nebraska Service Center
P.O. Box 87485
Lincoln, NE 68501-7485

Applicants **who have an approved Form I-360 religious worker petition** and live in any other state, U.S. territory, or Washington, D.C., should file the I-485 and I-765 with the Texas Service Center.

Texas Service Center
P.O. Box 851804
Mesquite, TX 75185-1804

D. Aliens in Removal Proceedings

The district court's order only affects cases that are currently pending before USCIS or that will be filed with USCIS pursuant to the order. As a general matter, USCIS lacks jurisdiction over aliens who are in removal proceedings. For aliens in removal proceedings or subject to a final order of removal, U.S. Immigration and Customs Enforcement (ICE) may issue separate guidance in the future.

4. Use

This memorandum is intended solely for the internal guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. In addition, the instruction and guidance in this memorandum is in no way intended to and does not prohibit enforcement of the immigration laws of the United States.

5. Contact Information

Questions related to this memorandum should be directed to the Business Operations Branch, USCIS Headquarters Office of Service Center Operations, through appropriate supervisory channels.