

INTERIM MEMO FOR COMMENT

Posted: 11-15-2010
Comment Period Ends: 11-30-2010
This memo is in effect until further notice

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

November 9, 2010

PM-602-0010

Policy Memorandum

SUBJECT: Ninth Circuit Court of Appeals Overturns the Permanent Injunction Issued by the District Court in *Ruiz-Diaz v. United States*, No. 09-35734 (9th Cir. Aug. 20, 2010); Revisions to the *Adjudicator's Field Manual (AFM)* Chapter 22.3(b)(1), AFM Update AD11-01

Purpose

This Policy Memorandum (PM) implements the mandate of the Ninth Circuit Court of Appeals overturning the permanent injunction issued by the U.S. District Court for the Western District of Washington in *Ruiz-Diaz v. United States*, No. 09-35734.

Scope

Unless specifically exempted herein, this PM applies to all USCIS employees and contractors who handle Form I-360, Petition for Amerasian, Widower, or Special Immigrant, seeking the classification of special immigrant religious worker and Form I-485, Application to Register Permanent Residence or Adjust Status, where the underlying basis is an I-360 petition seeking the classification of special immigrant religious worker. Furthermore, this PM supplements the guidance issued in the August 5, 2009 Memorandum HQDOMO AD09-45, "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) by adding an editor's note to Appendix 22-04 of the AFM.

Authority

8 CFR 245.2(a)(2)(B); *Ruiz-Diaz v. United States*, No. 09-35734.

Background

Since June 11, 2009, USCIS has accepted concurrently and properly filed I-360 petitions seeking the classification of special immigrant religious worker and I-485 applications pursuant to the order of the U.S. District Court for the Western District of Washington in the *Ruiz-Diaz v. United States* litigation (2009 WL 799683). This order was recently reversed by the Ninth Circuit, vacating the injunction, and became effective on October 13, 2010. To comply with the District Court's injunction, USCIS had to revise its procedures. USCIS is now modifying these procedures again to be consistent with the Ninth Circuit's decision and mandate. These operational changes will not take place until November 8, 2010.

Policy

As of November 8, 2010, any I-485 application where the underlying basis is an I-360 petition seeking the classification of special immigrant religious worker must be filed based on an approved I-360 petition. On or after November 8, 2010, USCIS service centers and offices (including the lockboxes) must reject any Form I-485, Form I-765 (Application for Employment Authorization), or Form I-131 (Application for Travel Document) filed concurrently with or based on a pending I-360 petition seeking the classification of special immigrant religious worker.

Any Form I-485 based on a Form I-360 religious worker petition filed prior to November 8, 2010 shall be accepted and adjudicated pursuant to the guidelines established in the August 5, 2009 Memorandum HQDOMO AD09-45, "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).

Implementation

The *AFM* is revised as follows:

1. Paragraph (b)(1) of Chapter 22.3 is revised to read:

(b) Special Immigrant Ministers of Religion & Other Religious Worker Cases.

(1) General. A U.S. employer or an individual alien may file an I-360 petition for special immigrant religious worker classification. In either case, a U.S. employer must submit certain evidence and an attestation which is now a part of Form I-360 and is required by the final rule in support of the petition. If applicable, the U.S. employer must submit a Religious Denomination Certification which is also now a part of Form I-360. For at least two years preceding the filing of the petition, the beneficiary must have been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States. The beneficiary must be coming to the United States to work:

- Solely as a minister of the U.S. employer's denomination;
- In a religious vocation either in a professional or nonprofessional capacity; or
- In a religious occupation either in a professional or nonprofessional capacity.

The beneficiary must have been carrying on such work continuously for at least two years preceding the filing of the petition. Additionally, see [Appendix 22-3](#) and the final religious worker rule at [73 FR 72275](#) (Nov. 26, 2008)

<http://edocket.access.gpo.gov/2008/pdf/E8-28225.pdf> for a general and detailed explanation pertaining to adjudication of special immigrant ministers of religion and other religious worker petitions.

Note

As of November 8, 2010, Form I-360 for the special immigrant religious worker classification, Form I-485, Form I-765, and/or Form I-131 may no longer be filed concurrently pursuant to the order of the Ninth Circuit Court of Appeals in *Ruiz-Diaz v. United States*, No. 09-35734 (9th Cir. Aug. 20, 2010). The Ninth Circuit's decision vacated the District Court's permanent injunction allowing for concurrent filing for special immigrant religious workers. Any I-485 application where the underlying basis is an I-360 petition seeking the classification of special immigrant religious worker must be filed based on an **approved** I-360 petition. See **Appendix 22-05** and the legal settlement notice on the USCIS Internet site at

http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=8fd36_a3817d12210VgnVCM1000004718190aRCRD&vgnnextchannel=2492db65022ee010VgnVCM1000000ecd190aRCRD.

Those I-485 applications based on I-360 religious worker petitions filed prior to November 8, 2010 shall be accepted and adjudicated pursuant to the guideline established in the August 5, 2009 Memorandum HQDOMO AD09-45, "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). See **Appendix 22-04**. [Note updated 11-9-2010, AD11-01]

Note

All religious workers, other than ministers, immigrating to the United States as special immigrant religious workers must enter the United States with a valid immigrant visa or adjust to permanent resident status (have an approved Form I-485) before September 30, 2012. Statutory amendments may extend this date. USCIS will provide information and further guidance if the date is extended. [Note updated 11-9-2010, AD11-01]

2. Appendix 22-4 is revised by adding an editor's note to read:

Appendix 22-4 Implementation of the District Court's Order in *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009); August 14, 2009 Fact Sheet and Press Release [Added 06-25-2009, AD09-45]

Editor's Note: The Ninth Circuit reversed the District Court's order and vacated the injunction described in this Appendix, effective October 13, 2010. Accordingly, the guidance herein applies only to Forms I-485 filed prior to November 8, 2010 and in conjunction with Forms I-360 seeking special immigrant religious worker classification. See also **Appendix 22-05**.

June 25, 2009 memo and August 14, 2009 Fact Sheet and Press Release here:

2. Appendix 22-05 is added to read:

Appendix 22-5 Order of the Ninth Circuit Court of Appeals in *Ruiz-Diaz v. United States*, No. 09-35734 (9th Cir. Aug. 20, 2010) Vacating the District Court's Permanent Injunction

[INSERT 9TH CIRCUIT COURT'S ORDER HERE]

4. The AFM **Transmittal Memoranda** button is revised by adding, in numerical order, the following entry:

AD11-01 11-9-2010	Chapter 22.3(b)(1) Appendix 22-04; Appendix 22-05	Provides guidance for processing Form I-360, Petition for Amerasian, Widower, or Special Immigrant, filed on behalf of special immigrant religious workers in light of the Ninth Circuit Court of Appeals' mandate overturning the permanent injunction issued in the U.S. District Court order in <i>Ruiz-Diaz v. United States</i> . It also supplements the guidance issued in AD09-45 by adding an editor's note.
----------------------	---	---

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. 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.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Business Employment Services Team of the Service Center Operations Directorate.