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: June 25, 2009

Subject: 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 implements the district court's order in *Ruiz-Diaz v. United States*, No. C07-1881RSL (W.D. Wash. June 11, 2009).

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.

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

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 previously filed for adjustment of status, whether or not submitted concurrent 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, spouses and children are also subject to the same requirements for adjustment eligibility, including admissibility.

B. Provisions Regarding Unlawful Presence and Unauthorized Work

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[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.

Pursuant to the district court's order, three categories of individuals 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 concurrently filed a Form I-360 with a Form I-485 and/or Form I-765 and whose I-360 and I-485 applications were rejected pursuant to 8 C.F.R. § 245.2(a)(2)(i)(B) and who properly re-files[5] the I-360 and I-485 applications 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);

(2) any alien who has a Form I-360 religious worker petition **pending** with 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. All persons who properly file their I-485 and I-765 on or after June 11, 2009 and have their applications receipted in by USCIS prior to September 9, 2009, also will have any period of unlawful presence or unauthorized employment tolled until USCIS issues a final administrative decision.

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. Adjudicators should also consider any periods of unlawful presence that accrue after approval of a pending Form I-360, if the alien fails to file a Form I-485 by September 9, 2009.

Any alien that believes that he/she is covered by the provisions of the court's order may refile 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).

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[5] 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.

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 filing new applications, re-filing applications, or who have pending Form I-360 religious worker petitions must mail their applications to:

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

Petitioners 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.

Petitioners **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

Petitioners 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.

Office of Communications

U.S. Citizenship and Immigration Services

USCIS Update

Aug. 14, 2009

USCIS Reminds Eligible Applicants under Ruiz-Diaz to File Adjustment of Status Application before End of August

WASHINGTON — U.S. Citizenship and Immigration Services (USCIS) reminds special immigrant religious workers, who have a pending or approved *Petition for Amerasian, Widow(er), or Special Immigrant,* (Form I-360), to file their *Application to Register Permanent Residence or Adjust Status,* (Form I-485), on or before Aug. 31, 2009. Special immigrant religious workers who wish to file a Form I-360 petition with an I-485 application should also file on or before Aug. 31, 2009.

USCIS is issuing this reminder because the U.S. Department of State recently published its September 2009 Visa Bulletin (http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html), stating that visas for the employment based fourth preference category, which includes special immigrant religious workers, will become unavailable effective Sept. 1, 2009. As a result, USCIS will reject Form I-485 applications submitted on or after Sept. 1, 2009, because an immigrant visa will not be immediately available, as required by INA 245(a).

USCIS will only accept properly filed Form I-485 applications based on pending or approved Form I-360 petitions seeking the special immigrant religious worker classification of either minister (SD-1) or nonminister (SR-1) or I-485 applications filed concurrently with I-360 petitions seeking SD-1 or SR-1 classification through Aug. 31, 2009.

Special immigrant religious ministers, who are not subject to the Sept. 30, 2009 sunset date, and who do not file on or before Aug. 31, 2009, must wait until visas for fourth preference special immigrant religious workers become available before they can apply to adjust status.

Individuals who file a Form I-360 seeking special immigrant religious worker classification (SD-1 or SR-1) with a Form I-485 and/or Form I-765 on or before Sept. 9, 2009, as well as beneficiaries of a pending or approved I-360 petition seeking SD-1 or SR-1 classification, who file a Form I-485 application with appropriate fees and supporting documentation on or before Sept. 9, 2009, will receive protection from the accrual of unlawful presence and unauthorized employment that began after either the filing of the Form I-360 or Nov. 21, 2007, whichever is earlier. For further information regarding the district court's final order, please refer to the *Ruiz-Diaz v. United States* legal settlement notices section on the USCIS web site at www.uscis.gov.

Special immigrant religious ministers who file an adjustment of status application during fiscal year 2010, based on an I-360 petition filed before Sept. 9, 2009, will receive protection from the accrual of unlawful presence and unauthorized employment up until Sept. 9, 2009. Periods of unlawful presence and unauthorized employment that accrue after Sept. 9, 2009, and before the filing of the Form I-485, will be counted when determining an alien's eligibility for adjustment of status.

Customers are encouraged to check the USCIS Web site at www.uscis.gov frequently for updates or call USCIS' National Customer Service Center toll free at (800) 375-5283.

– USCIS –

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Related Files

- USCIS Update: USCIS Reminds Eligible Applicants under Ruiz-Diaz to File Adjustment of Status Applications before End of August (NaNKB PDF)