

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GABRIEL RUIZ-DIAZ, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA,  
*et al.*,

Defendants.

No. C07-1881RSL

ORDER DIRECTING ENTRY OF  
JUDGMENT

On March 23, 2009, the Court found that 8 C.F.R. § 245.2(a)(2)(i)(B) was an unreasonable and impermissible construction of the governing statute and granted plaintiffs' motion for summary judgment. Rather than sign the proposed order provided with plaintiff's motion, the Court provided defendants an additional opportunity to consider and comment upon the practical and legal effects of the relief requested. The Court noted that, although the directives and injunctions sought were far-reaching, they were properly focused on avoiding or ameliorating the injuries that arose from enforcement of the invalid regulation. Dkt. # 118 at 6. Having reviewed the memoranda presented by the parties, including the supplemental authority submitted by plaintiffs on June 8, 2009, IT IS HEREBY ORDERED that:

(1) The bar against concurrent filings on behalf of religious workers, as set forth in 8 C.F.R. § 245.2(a)(2)(i)(B), is an impermissible construction of 8 U.S.C. § 1255(a) and is, therefore, invalid and unenforceable;

(2) Defendants shall accept as properly filed adjustment of status applications (Form I-

ORDER DIRECTING ENTRY OF JUDGMENT

1 485) and employment authorization applications (Form I-765) from individuals who are  
2 beneficiaries of petitions for special immigrant visas (Form I-360), whether submitted  
3 concurrently with or subsequent to the visa petition, provided the applications meet defendants'  
4 valid filing requirements. See 8 C.F.R. §§ 103.2 and 245.2(a)(3); 8 C.F.R. § 274a.13;  
5 Instructions on Forms I-485 and I-765. Except as noted in paragraphs (3) and (4), defendants  
6 shall adjudicate these applications in the same manner that it adjudicates adjustment of status  
7 and employment authorization applications from non-religious worker applicants.

8 (3) Beneficiaries of petitions for special immigrant visas (Form I-360) whose Form I-  
9 485 and/or Form I-765 applications were rejected by defendants pursuant to 8 C.F.R.  
10 § 245.2(a)(2)(i)(B) and who reapply under paragraph (2) of this Order are entitled to have their  
11 applications processed as if they had been submitted on their original submission date. Any  
12 employment authorization that is granted shall be retroactive to the original submission date.

13 (4) For purposes of 8 U.S.C. § 1255(c) and § 1182(a)(9)(B), if a beneficiary of a  
14 petition for special immigrant visa (Form I-360) submits or has submitted an adjustment of status  
15 application (Form I-485) or employment authorization application (Form I-765) in accordance  
16 with the preceding paragraphs, no period of time from the earlier of (a) the date the I-360  
17 petition was filed on behalf of the individual or (b) November 21, 2007, through the date on  
18 which the United States Citizenship and Immigration Services ("CIS") issues a final  
19 administrative decision denying the application(s) shall be counted as a period of time in which  
20 the applicant failed to maintain continuous lawful status, accrued unlawful presence, or engaged  
21 in unauthorized employment.

22 (5) A spouse or child of an individual who is the beneficiary of a petition for special  
23 immigrant visa (Form I-360) shall, if not otherwise entitled to an immigrant status and  
24 immediate issuance of a visa under 8 U.S.C. § 1153(a), (b), or (c), be entitled to the same status  
25 and the same order of consideration as the beneficiary.  
26

1 (6) The accrual of unlawful presence, unlawful status, and unauthorized employment  
2 time against the beneficiaries of pending petitions for special immigrant visas (Form I-360) shall  
3 be STAYED for 90 days from the date of this Order to allow the beneficiaries and their family  
4 members time in which to file adjustment of status petitions (Form I-485) and/or applications for  
5 employment authorization (Form I-765).

6 (7) Defendants shall, within 15 days of the date of this Order, mail and/or e-mail a  
7 copy of the attached notice to every person or entity who has a pending I-360 visa petition and to  
8 the list of religious, non-governmental, and community organizations maintained by CIS.

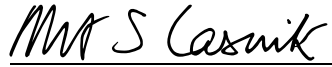
9 (8) Defendants shall, within 15 days of the date of this Order, post a copy of the  
10 attached notice on the CIS webpage under "Legal Settlement Notices" and maintain the posting  
11 for a period of one year. Defendants shall also revise the webpages regarding Forms I-360, I-  
12 485, and I-765 to delete references to the bar on concurrent filings and to include a link to the  
13 attached notice.

14 (9) The Court shall retain jurisdiction to enforce the terms of this Order. If disputes  
15 arise concerning agency compliance, counsel for plaintiffs shall provide written notice of the  
16 perceived problem to counsel for defendants. The parties shall meet and confer in an effort to  
17 resolve such disputes: any unresolved issues may be brought to the Court's attention via motion.

18  
19 The Clerk of Court is directed to enter judgment in this matter in favor of plaintiffs  
20 and against defendants.<sup>1</sup>

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23 <sup>1</sup> In their proposed order, defendants request a stay "pending any appeal taken in this case."  
24 Dkt. # 121 at 4. To justify a stay pending appeal, defendants must show (1) that there is a strong  
25 likelihood that they will succeed on the merits of their appeal; (2) that they will suffer irreparable injury  
26 if the proceeding is not stayed; (3) that a stay would not substantially injure any other party; and (4) that  
a stay is in the public's interest. See Hilton v. Braunskill, 481 U.S. 770, 776 (1987). Because  
defendants have not addressed any of the relevant factors, their request for a stay is DENIED.

1 Dated this 11th day of June, 2009.

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3 Robert S. Lasnik  
4 United States District Judge  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

RUIZ-DIAZ v. UNITED STATES OF AMERICA  
No. C07-1881RSL, CLASS ACTION

**NOTICE OF COURT'S ORDER REGARDING  
BENEFICIARIES OF PENDING PETITIONS FOR SPECIAL  
IMMIGRANT RELIGIOUS WORKER VISA (FORM I-360)**

Petitioners who filed or will file a Petition for Special Immigrant Religious Worker Visa (Form I-360) with United States Citizenship and Immigration Services ("USCIS") on behalf of individual beneficiaries are hereby notified that you or your beneficiary may now file an Application for Adjustment of Status (Form I-485) and, if your beneficiary seeks employment status as an adjustment applicant, an Application for Employment Authorization (Form I-765) even if USCIS has not yet issued a final administrative decision regarding the I-360 petition. Because USCIS is unable to search its records according to the beneficiary, we are asking for your assistance in sharing this notice with individuals who are or may be the beneficiary of an I-360 visa petition.

**Background**

On November 21, 2007, a class action lawsuit was filed challenging a USCIS regulation (8 C.F.R. § 245.2(a)(2)(1)(B)) that prohibits religious workers and their employers from concurrently filing I-360 visa petitions and I-485 adjustment of status applications.

**Description Of Court's Order**

The Court has invalidated USCIS' bar against concurrent filings as an unreasonable interpretation of the governing statute. Pursuant to an order dated June 11, 2009, USCIS is required to accept as properly filed adjustment of status applications (Form I-485) and employment authorization applications (Form I-765) from individuals who are beneficiaries of petitions for special immigrant visas (Form I-360), whether submitted concurrently with or subsequent to the visa petition, provided the applications meet USCIS' valid filing requirements. See 8 C.F.R. §§ 103.2 and 245.2(a)(3); 8 C.F.R. § 274a.13; Instructions on Forms I-485 and I-765. Except as noted below, USCIS shall adjudicate these applications in the same manner that it adjudicates adjustment of status and employment authorization applications from non-religious workers.

Beneficiaries of petitions for special immigrant visas (Form I-360) whose Form I-485 and/or Form I-765 applications were rejected by USCIS pursuant to 8 C.F.R. § 245.2(a)(2)(i)(B) and who reapply are entitled to have their applications processed as if they had been submitted on their original submission date. Any employment authorization that is granted shall be retroactive to the original submission date. Applicants shall not accrue unlawful presence, unlawful status, or unauthorized employment time between (a) the date the I-360 petition was filed on behalf of the individual or (b) November 21, 2007, whichever is earlier, and the date on which USCIS

issues a final administrative decision on the application(s).

**Important Note**

The Court's order in this case is subject to appeal and, if appealed, the terms of the Court's order may be modified or vacated. For the current status please refer to the USCIS website ([www.uscis.gov](http://www.uscis.gov)).

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