



AILA National Office  
Suite 300  
1331 G Street, NW  
Washington, DC 20005

Tel: 202.507.7600  
Fax: 202.783.7853

[www.aila.org](http://www.aila.org)

November 30, 2010

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
20 Massachusetts Avenue, NW  
Washington, DC 20529  
Via E-mail: [opefeedback@uscis.dhs.gov](mailto:opefeedback@uscis.dhs.gov)

**Re: 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 *Adjudicators Field Manual* (AFM) Chapter 22.3(b)(1), AFM Update AD11-01**

Dear Sir or Madam:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-reference Interim Memo for Comment (PM-602-0010).

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality, and the facilitation of justice in the field. Our members' collective expertise and experience makes us particularly well-qualified to offer views that we believe will benefit the public and the government. AILA members regularly advise and represent American companies, U.S. citizens, lawful permanent residents, and foreign nationals in seeking immigration benefits, including lawful admission to the United States, and in complying with U.S. immigration laws and regulations. We appreciate the opportunity to comment on the interim memo regarding the Ninth Circuit's action overturning the permanent injunction in *Ruiz-Diaz v. United States*.

By way of background, the *Ruiz-Diaz* lawsuit was initiated because of the long delays in adjudicating I-360 religious worker petitions. Concurrent filing of an underlying immigrant petition with an application for adjustment of status is permitted for immediate relatives and certain employment-based immigrants under 8 CFR §245.2(a)(2)(i)(B). Without concurrent filing, many employment-based nonimmigrants approaching the end of their maximum period of stay face difficult decisions and personal hardships when USCIS fails to act

in a timely manner on a pending immigrant petition. Concurrent filing allows such individuals to avoid leaving established U.S. jobs and uprooting their families while they pursue permanent resident status. However, fourth preference religious workers are excluded from the regulation permitting concurrent filing. Although religious workers who qualify for an R-1 nonimmigrant visa may live and work in the U.S. for up to five years, if USCIS is unable to adjudicate the I-360 petition promptly, the R-1 worker may run up against the five year maximum and be forced to depart the U.S.

We are aware that by the Ninth Circuit's mandate overturning the permanent injunction in *Ruiz-Diaz*, USCIS is at this time, no longer required to accept I-360/I-485 concurrent filings for religious workers. However, we strongly recommend that as an alternative, USCIS allow concurrent filing if an I-360 petition has been pending and remains unadjudicated for a lengthy period of time—for example, 6 months. In November 2008, USCIS adopted final regulations expanding the evidence required for I-360 approval. *See* 8 CFR §204.5. In addition, the regulations require the approval of an I-129 petition before an R-1 visa will be issued. 8 CFR §214.2(r). In light of the heightened evidentiary requirements and procedural protections that have been added to the religious worker program, USCIS should not require an extended period of time to conduct a site visit in connection with an I-360. If the I-360 is filed well in advance of the fifth R-1 year, and if there are unexpected delays in USCIS processing through no fault of the petitioner or beneficiary, the beneficiary should not be forced to leave the U.S. and should be allowed to file for adjustment of status.

AILA appreciates the opportunity to comment on this interim memorandum and we look forward to a continued dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION