

SEP 19 2008

HQ 70/8

Interoffice Memorandum

To:

Field Leadership

From: Donald Neufeld, Acting Associate Director

Domestic Operations

Re:

Handling of Non-Minister Special Immigrant Religious Worker Petitions Affected by the

October 1, 2008, Sunset Date

Purpose

The purpose of this memorandum is to provide guidance on the processing and adjudication of Forms I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on behalf of special immigrant religious workers engaged in a religious vocation or occupation affected by the upcoming October 1, 2008, sunset date. This memorandum also provides guidance on the processing and adjudication of Forms I-485, Application to Register Permanent Residence or Adjust Status, based on an underlying Form I-360 affected by the October 1 sunset date as well as guidance for processing these petition and application types on or after October 1, 2008.

Background

Section 203(b)(4) of the Immigration and Nationality Act (INA) provides for the admission as "special immigrants" individuals who qualify as professional or other religious workers in a religious vocation or occupation as defined at INA § 101 (a)(27)(C)(ii)(II) and (III). These provisions were originally enacted in 1990, and have been extended multiple times. These provisions will expire on October 1, 2008. Individuals seeking to immigrate under either of these two special immigrant religious worker classifications must adjust their status to that of a lawful permanent resident or be admitted with an immigrant visa before October 1, 2008. This sunset date includes the accompanying spouse and children of such special immigrant religious workers. This sunset date does not affect those special immigrant religious workers seeking to

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carry on the vocation of a minister of a religious denomination, as defined at INA § 101(a)(27)(C)(ii)(I).

The U.S. House of Representatives passed legislation on April 14, 2008, extending the October 1, 2008, sunset date; the Senate is currently considering similar legislation. If Congressional action results in an extension, affected special immigrant religious workers with an approved Form I-360 may file Form I-485 or pursue consular processing, as eligible.

Guidance

USCIS continues to receive and process Forms I-360 and Forms I-485 for affected religious workers. To the fullest extent possible, adjudicators should make every effort to expedite the adjudication of any pending Form I-485 based on an underlying Form I-360 filed for a special immigrant religious worker classification affected by the sunset, provided that the compliance visit has been completed and all eligibility criteria have been met.

In some instances, USCIS may need to promptly forward an approved petition to the Department of State's National Visa Center (NVC) in order that the alien religious worker may receive an immigrant visa and enter the United States before October 1, 2008. In doing so, officers should place a cover sheet on the I-360 petition. The cover sheet should contain the annotation "Expedite Processing Requested Due to Religious Worker Sunset." USCIS also receives requests from individuals who have adjusted their status as special immigrant religious workers to notify a U.S. consulate in order that a spouse and/or child can be processed for an immigrant visa as a following-to-join relative. To the fullest extent possible, officers should continue expediting the adjudication and processing of Form I-824, Application for Action on an Approved Application or Petition, and notification to the NVC, to facilitate the following to join relatives' admission before October 1, 2008. In transmitting the following to join notification, officers should annotate the following to join notification as "Expedite Processing Requested Due to Religious Worker Sunset."

Beginning on October 1, 2008, adjudicators should hold in abeyance any unadjudicated Form I-360 or Form I-485 affected by the sunset date. Additional guidance on the disposition of cases held in abeyance will be provided at a later date.

Unless or until Congress passes an extension of the sunsetting provisions, Form I-360 petitions and Form I-485 applications received on or after October 1, 2008 that are affected by the sunset date should be rejected.

Questions regarding the pending legislation and general processing questions should be directed to Headquarters Office of Service Center Operations through supervisory channels.

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