

FILED

UNITED STATES COURT OF APPEALS

JUL 06 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GABRIEL RUIZ-DIAZ; HYUN SOOK
SONG; CINDY LEE MARSH; PETER
GILLETTE; SALECK OULD DAH
OULD SIDINE; PABLO SANDOVAL;
YURIY KASYANOV; LELIA
TENREYRO-VIANA; EDGARDO
GASTON ROMERO LACUESTA;
ROSARIO RAZO ROMERO; YOUN SU
NAM; HAROLD MICHAEL CARL
LAPIAN; LAND OF MEDICINE;
UKRAINIAN AUTOCEPHALOUS
ORTHODOX CHURCH; SEATTLE
MENNONITE CHURCH,

Plaintiffs - Appellees,

v.

UNITED STATES OF AMERICA;
UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; UNITED
STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED
STATES DEPARTMENT OF JUSTICE;
MICHAEL AYLES, Acting Deputy
Director of Citizenship and Immigration
Services; JANET NAPOLITANO,
Secretary of Department of Homeland
Security; ERIC H. HOLDER, Jr., Attorney
General, Attorney General,

Defendants - Appellants.

No. 09-35734

D.C. No. 2:07-cv-01881-RSL
Western District of Washington,
Seattle

ORDER

Before: RYMER and N.R. SMITH, Circuit Judges, and WALTER, Senior District Judge. *

The parties are requested to be prepared to discuss the following questions at oral argument: (1) Is the effect of 8 C.F.R. § 245.2(a)(2)(i)(B) to waive the apparent requirement of 8 U.S.C. § 1255(a) that an immigrant visa be “immediately available” at the time of application? (2) Assuming that the regulation does have this effect, upon what does USCIS rely for the authority to waive for certain classifications of alien beneficiaries but not others, and upon what does Ruiz-Diaz rely for his position that the requirement cannot be waived for some beneficiaries but not others?

* The Honorable Donald E. Walter, Senior United States District Judge for Western Louisiana, sitting by designation.