

Pastors fight for legal residency after visa rule change

October 4, 2023

GORDON (BP)—Albert Oliveira came to the United States from Brazil in 2010 on a student visa, graduated from Southwestern Baptist Theological Seminary, began serving as pastor of a growing church, married and started a family.



The Oliveira family have little chance of legally remaining in the U.S. past February 2024, having already exhausted more than three of the five years their R1 visa will be active. (Photo via BP)

But he and his wife, a German citizen, would need green cards to remain in the United States and allow Oliveira to continue his pastorate at First Baptist Church in Gordon.

In the middle of their application journey in April, the U.S. government unexpectedly changed the rules and effectively added years to their wait. The R1 nonimmigrant religious worker visas he and his wife hold will expire before they can even apply for green cards under the new process.

“Now we’re just trapped in a limbo,” Oliveira told Baptist Press.

The Oliveiras and their American-born toddler have little chance of legally remaining in the U.S. past February 2024, having already exhausted more than three of the five years their R1 visa will be active.

“It’s just a longer wait that exceeds what we are allowed to stay here legally. Attorneys themselves say we would have to leave the country at the end of the five years,” Oliveira said. “Basically, the whole religious worker category is useless. You’d have to go to another category to even have a chance of staying in the U.S.”

Caught in the middle when rules changed

Oliveira and his family are among thousands. Churches, ministries and attorneys are advocating for change.

The U.S. government issued 6,300 nonimmigrant religious visas in 2018 before the COVID-19 pandemic when applications slacked, and issued 5,900 in 2022, the American Immigration Lawyers Association reported.

“What is really disappointing to us is the egregious nature of it, is that they provided no advance notice to people,” said Sharvari Dalal-Dheini, director of government relations for the lawyers’ association. “... [T]hings changed overnight, significantly.”

For years, a limited number of immigrant visas have been available

annually, with a per country limit of 7 percent of the total allotment. Only a portion of the total visas are reserved for religious workers, described as EB-4 (employment-based category 4) applicants.

In March 2023, the U.S. government deemed it had been allotting immigrant visas incorrectly for seven years to residents from El Salvador, Honduras and Guatemala in a way that created lengthy backlogs for applicants from the three countries known as the Northern Triangle.

The change would be corrected the next month, the government said, resulting in the creation of severe backlogs for religious workers and others in the EB-4 category from all countries.

Dalal-Dheini expects the change to create an 11-year backlog for the most recent EB-4 applicants in a line she described in July as 105,267 applicants long and growing. Until recently, the EB-4 category for all countries except Mexico and the Northern Triangle had been current, she said.

The change “without sufficient notice is unlawful and must be immediately rectified,” Dalal-Dheini said in a July 31 letter to Secretary of State Anthony Blinken and Secretary of Homeland Security Alejandro Mayorkas.

In the letter, the AILA advocated a range of administrative fixes to the problem, including granting deferred action for some applications, eliminating certain waiting periods, extending employment authorization for certain applicants, and codifying protections for special immigrant juveniles who are also included in the EB-4 category.

“It creates a lot of stress and anxiety for people who are here and thought they had a plan, not only for the religious workers themselves, but the people they serve,” Dalal-Dheini said. “There are a number of people who are impacted, and I know the religious groups in the community have gotten active.”

Lawsuit filed

In April, the Society of the Divine Word joined a multi-denominational group of about 20 churches, missions and religious denominations in challenging the change. Suing the U.S. Citizenship and Immigration Services, plaintiffs claimed violations of the Establishment Clause and the Free Exercise Clause of the First Amendment, the Religious Freedom Restoration Act, the Immigration and Naturalization Act, and other missteps.

The plaintiffs said they exercise and advance their religious beliefs by employing foreign-born ministers and international religious workers, and requested a summary judgment, but the district court in Northern Illinois instead dismissed the case July 23.

Short of leaving the country, Oliveira sees only one option available—applying for a visa under a different category, EB-2 (employment based second preference). Among requirements in the EB-2 category is the stipulation that employers pay a certain minimum salary, a requirement which Oliveira said might be a burden for some churches.

“I do believe that it does hurt the religious freedom because the church is independent, and we shouldn’t be at the mercy of the government to tell how long their pastor should be, and who their pastor should be, or how much they should be making,” Oliveira said.

“The church is growing. It’s healthy, and the gospel is being shared. And the church really is feeling burdened that they (might lose) the pastor that has been part of such a journey with them.”

Since Oliveira began serving First Baptist Gordon in 2022, Sunday worship attendance has grown from around 20 to more than 150, he said. The church has hired an attorney to help Oliveira through the visa application

process.

“It has caused our church much burden financially. It has caused me a lot of emotional burden because I’m here, not knowing where to go [in the] next year and a half,” he said. “My wife is from one country, I’m from another, and my son is from this country. So wherever we go, we’re going to have to figure out the immigration of that country.”

The Oliveiras would prefer to stay put.

“I love this country,” he said. “This is a second home for me, my wife, and a first home for our son. But my perception is that the people are silent about those that are trying to come to the U.S. legally.”