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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED]

Office: Vermont Service Center

Date: MAR 17 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of the Foreign Residence Requirement
under Section 212 (e) of the Immigration and Nationality Act, 8
U.S.C. § 1182(e)

ON BEHALF OF APPLICANT:
[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who is subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e), because she participated in a program which was funded by a United States government agency. The applicant last entered the United States as a nonimmigrant exchange visitor on July 13, 1990, and remained longer than authorized. The applicant seeks the above waiver of the two-year foreign residence requirement after alleging that she cannot return to the country of her nationality because she would be subject to persecution on account of her political opinion.

The director reviewed the documentation submitted and determined the record failed to establish the applicant would be subject to persecution as indicated. The director denied the application accordingly.

On appeal, counsel states that the director erred in denying the application. He asserts that the clear and convincing evidence burden of proof should not be applied in assessment of the J-1 waiver. He further states that the applicant is a committed worker of the Philippine government serving in areas considered by the government as Communist Party of the Philippines-New People's Army (CPP-NPA) infested areas and which has been the subject of continuing counter-insurgency operations by the Philippine government because of growing destabilization by the insurgents.

On March 31, 1999, an immigration judge ordered the applicant removed *in absentia*. A Warrant of Removal/Deportation was issued on April 7, 1999, but the applicant failed to surrender for removal on May 11, 1999. On June 1, 1999, a motion to reopen was granted. On August 24, 2000, an immigration judge denied the applicant's application for asylum and withholding of deportation. The judge granted the applicant until October 23, 2000, to depart the United States voluntarily in lieu of removal. The applicant failed to depart by that date. The applicant filed an appeal of that decision with the BIA on September 21, 2000, and she was granted until March 28, 2001, to submit a brief in support of that appeal. A decision by the BIA is not contained in the record.

Section 212(e) of the Act provides, in pertinent part that: No person admitted under section 101(a)(15)(J) of the Act, 8 U.S.C. § 1101(a)(15)(J), or acquires such status after admission,

(i) whose participation in a program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,....

(iii) ... shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion...
[Emphasis added]

To be eligible for a waiver under section 212(e) of the Act, the applicant must establish that he or she would be subject to persecution on account of race, religion, or political opinion. This standard is different from and more restrictive than the eligibility requirements for asylum under section 208 of the Act, 8 U.S.C. § 1158, where an applicant must establish a well-founded fear of persecution.

The record reflects that the applicant had previously worked for the Rural Water Supply and Sanitation Project (RWSSP) which was a special cooperative project between the Philippine government and USAID. As part of her job she would travel to various sites in rural areas that had heavy NPA presence. On November 2, 1987 she was caught in crossfire between NPA and Philippine military. She was not harmed. After that she began getting phone calls that she believes were from the NPA warning her to be careful. She believes they thought she was a government spy. Aside from the phone calls

she had no further problems, and she left the Philippines in July 1990.

It has been over 15 years since the one incident that was the basis for the applicant's claim of asylum. She has not presented evidence that she was the target of the crossfire, nor was she able to state conclusively that the phone calls were from the NPA. Even if she were a target in 1987, she has provided no evidence that she was a high profile individual whom the NPA would still continue to target today. As such, she has not shown that she would be persecuted if she were to return to the Philippines.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361. The applicant in this case has not met that burden.

ORDER: The appeal is dismissed