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

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

FEB 17 2005

IN RE:

Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cameroon who was admitted to the United States as a J-1 Nonimmigrant Exchange Visitor on September 3, 2001 to work at the Normandale French Elementary School in Edina, Minnesota. On August 7, 2002, the applicant requested a change of his nonimmigrant status to an F-1 student visa. That application was denied because the applicant 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). The applicant seeks a waiver of his two-year Cameroonian residence requirement in order to remain in the United States and apply for a nonimmigrant student visa.

The Director concluded that the problems described by the applicant did not constitute persecution on account of political opinion and the approval of the application was not warranted as a matter of discretion. The applicant's waiver application was denied accordingly.

On appeal, counsel asserts that the applicant has established eligibility for a waiver because he suffered past persecution and has a well-founded fear of future persecution in Cameroon. In support of the appeal, counsel submitted a brief; a letter from the Provincial Secretary of the SDF; a letter from the Provincial Deputy of the SDF; and a letter from the doctor who treated the applicant when he was in prison. The entire record was considered in rendering this decision.

Section 101(a)(15)(J) of the Act, 8 U.S.C. § 1101(a)(15)(J) states:

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him.

Section 212(e) of the Act states in pertinent part that:

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission

(i) whose participation in the 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,

(ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training, 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 [now, Citizenship and Immigration Services, CIS] 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**, the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien. (emphasis added)

Counsel's brief addresses the applicant's **eligibility for asylum**, not the applicant's **eligibility for a waiver** of the two-year foreign residence requirement because he would be subject to persecution. An alien may be granted asylum if the alien is a refugee within the meaning of Section 101 (a) (42) (A) of the Act:

- (A) A refugee is any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country

because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Counsel contends that the applicant suffered past persecution and has a well-founded fear of persecution on account of his political opinion (SDF membership), race ([REDACTED]) and membership in a particular social group ([REDACTED]) therefore the applicant is a refugee. Counsel incorrectly claims that this establishes the applicant's eligibility for a waiver of the foreign residence requirement.

To establish eligibility for a waiver, the applicant must prove that he cannot return to Cameroon because he **would be subject to persecution on account of race, religion, or political opinion**. The legal requirements for establishing eligibility for asylum differ from the requirements for establishing eligibility for a waiver. First, unlike asylum, the fact that the applicant may have suffered past persecution does not create a presumption of future fear. Second, the standard of proof for establishing a well-founded fear (**reasonable possibility of persecution**) is lower than the standard required to show that an applicant **would be subject to persecution**. Third, the applicant's claim is based on political opinion (SDF member), race (Baka Pygmy), and membership in a particular social group ([REDACTED]). Membership in a particular social group is not a protected ground for purposes of establishing a waiver.

The applicant stated that he joined the SDF, an opposition political party, in 1998. He submitted photocopies of his SDF membership card, letters from various SDF officials attesting to his party activities, and a letter from a doctor who stated that he treated the applicant for injuries sustained while in prison. In his affidavit, the applicant described three instances of mistreatment based on his SDF membership. In 1999, Cameroonian police and gendarmes (military) beat him and various other SDF members for holding a rally in Bertoua. In May, 2000, the applicant participated in an SDF rally in Bertoua. The gendarmes dispersed the crowd by threatening to shoot and by spraying water on the people. During March 2001, the applicant participated in a rally in Mindorou to block the transportation of wood by logging companies. The protesters were demonstrating against the logging companies for failing to provide promised community improvements. [REDACTED] arrested the applicant and about 50 other protesters. The applicant was taken to a prison in Batouri, where he was held for about two months. While in prison, he was interrogated and beaten daily.

The AAO finds that counsel has failed to establish that the applicant would be subject to persecution in Cameroon on account of his membership in the SDF. On each occasion described by the applicant, the Cameroonian authorities acted because he participated in a protest with others. The applicant was not singled out for persecution, nor is he a high profile party member. Country reports indicate that the SDF is one of the major opposition political parties in Cameroon, and that government officials and the police sometimes harass and intimidate party members. *Report of fact-finding mission to Cameroon*, Immigration and Nationality Directorate, Home Office, United Kingdom, 17-25 January 2004. The applicant stated that based on his last arrest, detentions and torture, the government knows about his SDF activities and has blacklisted him; however, he provided no evidence to substantiate this claim. Also, the applicant was able to leave the country without incident. The possible risk of persecution faced by the applicant does not meet the standard of proof required to establish eligibility for a waiver.

The AAO further finds that counsel has failed to establish that the applicant would be subject to persecution in Cameroon on account of his race ([REDACTED]). In his affidavit, the applicant stated:

There is no protection for the rights of the Baka Pygmies in Cameroon. The Baka people continue to suffer as the powerful timber companies and government allies continue to evict them from their land in order to exploit the rich forest. Pygmies lack access to portable [sic] water, roads and educational facilities. Most of my people do not go to school and the few that do, do not get jobs because they present a threat to the establishment.

Country reports indicate that indigenous Pygmies face discrimination, but that most incidents of discrimination do not rise to the level of persecution. *Report of fact-finding mission to Cameroon*, Immigration and Nationality Directorate, Home Office, United Kingdom, 17-25 January 2004. The applicant presented no evidence establishing that he has been persecuted because he is a Baka Pygmy. Indeed, the applicant's experience appears to be at odds with his description of discrimination experienced by Baka Pygmies. The applicant attended school for 20 years, including two years at the University of Yaounde. Additionally, the applicant presented no evidence that family members who are Baka Pygmies have been persecuted.

Accordingly, the applicant has not demonstrated that he would be subject to persecution upon his return to Cameroon on account of race, religion, or political opinion.

The burden of proving eligibility for relief under section 212(e) of the Act rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant in the present case has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.