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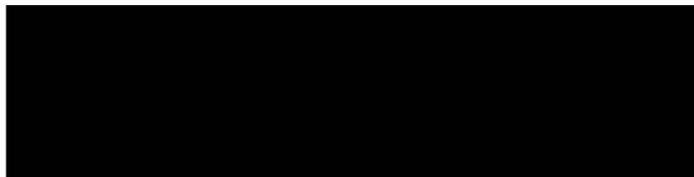
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

APR 22 2008

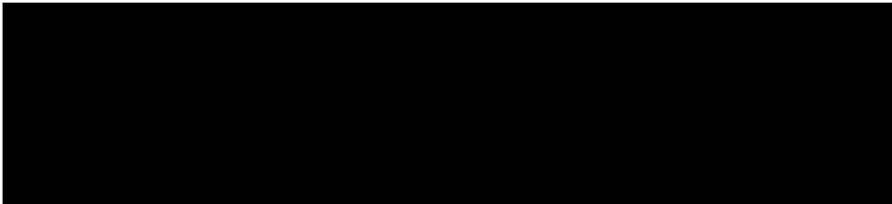
IN RE:



APPLICATION:

Application for Waiver of 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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The record reflects that the applicant, a native and citizen of Iran, obtained J-1 nonimmigrant exchange status in June 2006 to participate in graduate medical training. He is thus subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant presently seeks a waiver of the two-year foreign residence requirement based on persecution on account of religion.

The director found that the applicant had failed to establish he would be subject to persecution if he returned to Iran. *Director's Decision*, dated October 9, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated November 8, 2007 and additional documentation relating to religion in Iran. The entire record was reviewed and considered in rendering this decision.

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

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.

Persecution has been defined as "...a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I & N, Dec. 211 (BIA 1985). Unlike applicants for refugee or asylee status, who may establish a well-founded fear of persecution on account of five separate grounds including race, religion, nationality, membership in a particular social group, or political opinion, an applicant for a waiver under section 212(e) of the Act must establish that he or she **would be** persecuted on account of one of three grounds, race, religion or political opinion.

To support the assertion that the applicant would be persecuted on account of his religion if he returned to Iran, the applicant states as follows:

...Throughout my adulthood life I have had profound interest in the faith of Christianity. After conducting intense research in the subject matter for many years in secrecy, in my country of birth, I came up with a determined decision to change my faith. However, I was incapable to do so as changing my faith in Iran (from the inherited Islamic faith to another) would have subjected me as well as my family members to immediate execution (by hanging)....

...Once I started my residency period at UC Davis I continued my research on Christianity and met Pastor [REDACTED] at Bethel church.... Pastor [REDACTED] has ever since become a great mentor to me and under his guidance and supervision I was able to finally bring into reality a long time dream, wish, and passion by converting into the faith of Christianity in February of 2007. It is the most divine gift to be able to fully and freely practice my faith in the Jesus Christ without the fear of being killed, or jeopardizing the lives of my family members, in the United States—a freedom that would never be attainable in Iran....

Letter from [REDACTED] dated July 16, 2007.

As further stated by counsel,

[REDACTED] [the applicant] has clearly established that if he returns back to Islamic Republic of Iran he would be subject to persecution on account of his religious beliefs [sic], specifically as a Christian in a Muslim country which imposes the death penalty for such a conversion. In other words, because he has converted to Christianity, he is now subject to persecution and punishment by death....

...if [REDACTED] is returned to the Islamic Republic of Iran he would be asked for the reasons that he is not attending to Muslim religious ceremonies (i.e. Ramadan, Friday prayers etc.), his response would be that he is Christian. This act alone would put him and his family in imminent danger. Not doing so would make [REDACTED] not a Christian, because he disowned Christ before men. Mr. [REDACTED] would also be required to declare himself Christian if asked, which, again, would put him and his family's life in imminent danger....

Brief in Support of Appeal, dated November 8, 2007.

In corroboration of the above statements, the U.S. Department of State, in its International Religious Freedom Report, 2007, states, in pertinent part:

The Constitution states that the official religion of Iran is Islam, and the doctrine followed is that of Ja'afari (Twelver) Shi'ism. Article 4 of the Constitution states that all laws and regulations must be based on Islamic criteria. The Government severely restricts freedom of religion.

There was continued deterioration of the extremely poor status of respect for religious freedom during the reporting period. Government rhetoric and actions created a threatening atmosphere for nearly all non-Shi'a religious groups, most notably for Bahá'ís, as well as Sufi Muslims, evangelical Christians, and members of the Jewish community.

Reports of government imprisonment, harassment, intimidation, and discrimination based on religious beliefs continued during the reporting period. Bahá'í religious groups often reported arbitrary arrests, expulsions from universities, and confiscation of property. Government-controlled media, including broadcast and print, intensified negative campaigns against religious minorities--particularly the Bahá'ís--during the reporting period.

Although the Constitution gives Christians, Jews, and Zoroastrians the status of "protected" religious minorities, in practice non-Shi'a Muslims face substantial societal discrimination, and government actions continued to support elements of society who create a threatening atmosphere for some religious minorities.

The U.S. Government makes clear its objections to the Government's harsh and oppressive treatment of religious minorities through public statements, support for relevant U.N. and nongovernmental organization (NGO) efforts, as well as diplomatic initiatives. Every year since 1999 the U.S. Secretary of State has designated Iran as a "Country of Particular Concern" (CPC) under the International Religious Freedom Act, for its particularly egregious violations of religious freedom....

The Constitution declares the "official religion of Iran is Islam and the doctrine followed is that of Ja'afari (Twelver) Shi'ism." All laws and regulations must be consistent with the official interpretation of Shari'a (Islamic law). The Government severely restricts freedom of religion. The Constitution states that "within the limits of the law," Zoroastrians, Jews, and Christians are the only recognized religious minorities who are guaranteed freedom to practice their religion; however, members of these recognized minority religious groups have reported government imprisonment, harassment, intimidation, and discrimination based on their religious beliefs.

The Supreme Leader of the Islamic Revolution, Ayatollah Ali Khamene'i, heads a tricameral structure of government (legislative, executive, and judicial branches). The Supreme Leader is not directly elected, but chosen by a group of 86 Islamic scholars (the Assembly of Experts), who are directly elected. All acts of the Majlis (parliament) must be reviewed for strict conformity with Islamic law and the Constitution by the Council of Guardians, which is composed of six clerics, appointed by the Supreme Leader and six Muslim jurists (legal scholars), nominated by the head of the judiciary and approved by the Majlis. The Council of Guardians also screens presidential and Majlis candidates for eligibility. The Supreme Leader is also advised by the Expediency Council, which has the authority to mediate disputes between the Majlis and the Council of Guardians. The president is directly elected every 4 years. Mahmoud Ahmadi-Nejad won the presidency in June 2005.

The Government does not respect the right of Muslim citizens to change or renounce their religious faith.

Non-Muslims may not engage in public religious expression and persuasion among Muslims, and there are restrictions on published religious material.

A child born to a Muslim father automatically is considered a Muslim.

Apostasy, specifically conversion from Islam, is punishable by death, although there were no reported cases of the death penalty being applied for apostasy during the reporting period. Proselytizing of Muslims by non-Muslims is illegal. Evangelical church leaders are subject to pressure from authorities to sign pledges that they will not evangelize Muslims or allow Muslims to attend church services....

Government policy and practice contributed to severe restrictions on religious freedom. All non-Shi'a religious minorities suffer varying degrees of officially sanctioned discrimination, particularly in the areas of employment, education, and housing.

The Ministry of Islamic Culture and Guidance (Ershad) and the Ministry of Intelligence and Security (MOIS) monitor religious activity closely. Members of recognized religious minorities are not required to register with the Government, and religion is not noted on national identity cards; however, their communal, religious, and cultural events and organizations, including schools, are monitored closely. Registration of Bahá'is is a police function. The Government required evangelical Christian groups to compile and submit membership lists for their congregations....

Christians--particularly evangelicals--continued to be subject to harassment and close surveillance. During the reporting period, the Government vigilantly enforced its prohibition on proselytizing by evangelical Christians by closely monitoring their activities, discouraging Muslims from entering church premises, closing their churches, and arresting Christian converts. Members of evangelical congregations are required to carry membership cards, photocopies of which must be provided to the authorities. Worshipers are subject to identity checks by authorities posted outside congregation centers. The Government restricted meetings for evangelical services to Sundays, and church officials are ordered to inform the Ministry of Information and Islamic Guidance before admitting new members.

On September 26, 2006, authorities arrested evangelical Christians Fereshteh Dibaj and Reza Montazami at their home in the northeastern part of the country. Dibaj and Montazami operated an independent church in Mashhad. The Information Ministry held the couple for 10 days without bringing any charges, and agents confiscated their home computer and other belongings. They were released on October 5, 2006.

On July 24, 2006, authorities arrested Issa Motamedi Mojdehi, a Muslim convert to Christianity, following his attempt to register the birth of his son. Charges of drug trafficking were brought against him, which Christian groups said was an attempt to punish him for his conversion.

On May 2, 2006, a Muslim convert to Christianity, Ali Kaboli, was taken into custody in Gorgan, after several years of police surveillance, and threatened with prosecution if he did not leave the country. He was interrogated and was held incommunicado before being released on June 12, 2006.

On November 22, 2005, a Muslim convert to Christianity, Ghorban Tori, was kidnapped from his house in the northeast and killed. His body was later returned to his house. Tori was a pastor at an independent house church of converted Christians. After the killing, security officials searched his house for Bibles and banned Christian books in Persian. In the previous week, according to some sources, the Ministry of Intelligence and Security arrested and tortured 10 Christians in several cities.

In 2004 sources reported the arrest of several dozen evangelical Christians in the north, including a Christian pastor, his wife, and their two teenage children in Chalous, Mazandaran Province. The Government released many of those arrested, including the pastor and his family, after 6 weeks in detention.

In 2004 security officials raided the annual general conference of the country's Assemblies of God Church, arresting approximately 80 religious leaders gathered at the church's denominational center in Karaj. Assemblies of God Pastor Hamid Pourmand, a former Muslim who converted to Christianity nearly 25 years ago and who led a congregation in Bushehr, was the only detainee not released. In late January 2005 he was tried in a military court on charges of espionage, and on February 16, 2005, he was found guilty and sentenced to 3 years. Pourmand, who was a noncommissioned officer, was discharged from the army and forfeited his entire income, pension, and housing for his family. A website documenting persecution of Christians reported that Pourmand was released on July 20, 2006.

The Government was allegedly responsible for the killing of Sunni clerics in recent years. Sunni leaders reported abuses, including detentions and torture of Sunni clerics, and an unconfirmed report of a suspicious death of a Sunni cleric who had defied orders not to return to the mosque after his release from prison.

There were reports of three killings of senior clerics during 2007, including the June 24, 2007 killing of Hesham Saymary, in the ethnically-Arab dominated province of Khuzestan. It is not known whether the Government had any role in those killings.

International Religious Freedom Report 2007-Iran, Released by the Bureau of Democracy, Human Rights, and Labor, dated September 14, 2007.

Section 212(e) of the Act requires that the applicant establish that he would be persecuted upon return to his country of nationality or last residence, a very high standard. The AAO finds that the applicant has

established that he would be persecuted in Iran on account of religion, based on the fact that conversion from Islam is punishable by death.

The burden of proving eligibility for a waiver under section 212(e) of the Act, rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has met his burden. The appeal will therefore be sustained. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the DOS. Accordingly, this matter will be remanded to the director so that she may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The matter will be remanded to the director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.