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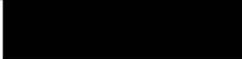
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 02 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:

SELF-REPRESENTED

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 Venezuela, obtained J-1 nonimmigrant exchange status in August 2003 to participate in a program financed by the U.S. government. 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 political opinion.

The director found that the applicant had failed to establish he would be subject to persecution if he returned to Venezuela. *Director's Decision*, dated October 15, 2007. The application was denied accordingly.

In support of the appeal, the applicant submits a Form I-290B, Notice of Appeal or Motion and referenced attachments. In addition, on April 28, 2008, the AAO received a letter in support, written by [REDACTED] Venezuela Desk Officer, U.S. Department of State, dated April 28, 2008. 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 political opinion if he returned to Venezuela, the applicant states as follows:

...The situation has been extremely dangerous for human right defenders and democracy activist since the year 2004 (one year after the beginning of the Fulbright program) and that the Venezuelan government begun to persecute and threat my organization, my family and myself since the year 2004....

Authoritarian and dictatorial regimes in the world have been proving that their actions go beyond typical form of governmental persecution; this type of regimes use terror as way to persecute and use direct but also indirect forms of threat. The government has been using their followers to persecute (using the judicial system), terrorize (using governmental controlled media and followers), phone calls tape recording and threatening, unmarked cars to follow me and 'visits' from the Disip (Venezuelan government Security Police Corp) to my office. The government controls all the institutions, National Prosecutor Office and Courts so

it is impossible to present a claim or to denounce the situations...I received terrible threatening phone calls, some subjects (government followers) told me that they will kidnap my daughter and they took pictures to intimidate in public places. In my last trip to Venezuela security forces from the government hold me in detention for questionings in the airport....

Some press articles proves direct threats and I included a CD taped from a popular governmental TV show in the official channel of the government in which they directly appointed my organization and myself.

Several colleges (sic) will face more than 30 years in jail just because US support to our organizations (National Endowment for Democracy, NED, support) with court procedures. The (sic) tried to indict my organization and myself but we defend ourselves but they have been threaten us to open a procedure against-us again....

All the direct officers from the Department of State with direct contact and responsibility with Venezuela support my petition and they are willing to testify in my favor about my work in Venezuela and the risk for me and my family....

...My work until the year 2003 was safe and my positions had respect from authorities. There was respect for NGOs until 2002 and no attacks until 2004. From 2004 to this time the government has been focusing its attention in human rights activists and NGOs. From the reports submitted with the appeal you can see how the government has been turning itself into a more authoritarian and repressive regime over the time. Before President Hugo Chavez there was an environment of respect to NGOs and even Chavez had respect to several movements from civil society until the end of the year 2003. I proved with the documents, reports from experts, reports from prestigious organizations and media coverage the increase of the pressure from the government to democracy leaders and the attacks to the US government and the organizations supported by the US Government and NED since the year 2003. I was safe before those changes, now my family is in risk because my US friends and because my will to defend democracy....

I am not the typical activist. I am a national and international well known Venezuelan democracy activist and I have been increasing my role since the year 2004. Since the year 2004 I am the representative of the opposition NGOs at the United Nations and the Organization of American States...I was elected as a directive of the Steering Committee of the World Movement for Democracy...this year (2007) a US supported platforms that active critics the Venezuelan government. I am a well known activists (see the pictures) against authoritarian and criminal regime in Venezuela in every international event. I am

one of the responsible for the exclusion of Venezuela to the UN Community of Democracies. I have been campaigning against the autocratic government of Hugo Chavez in every international conference and directly with former and current presidents in Latin America and other countries, even President Bush invited me to talk in front of (sic) 46 head of states about Venezuelan crisis. I am one of the most active supporter of NED and USAID in Venezuela. ...

Basis for the Appeal, dated November 3, 2007.

In corroboration of the above statements, the U.S. Department of State, in its Country Report on Human Rights Practices-Venezuela, states, in pertinent part:

Politicization of the judiciary and official harassment of the media and of the political opposition continued to characterize the human rights situation during the year. The following human rights problems were reported: unlawful killings; disappearances reportedly involving security forces; torture and abuse of detainees; harsh prison conditions; arbitrary arrests and detentions; a corrupt, inefficient, and politicized judicial system characterized by trial delays, impunity, and violations of due process; searches without warrants of private homes; official intimidation and attacks on the independent media; government-promoted anti-Semitism; widespread corruption at all levels of government; violence against women; trafficking in persons; and restrictions on workers' right of association.

Many NGOs reported threats, physical attacks, and harassment, especially in a climate of possible criminalization of receipt of foreign funding. Human rights organizations expressed concern that President Chavez's proposed constitutional amendment to regulate international support for organizations with "political goals" would be used to deny NGOs foreign funding opportunities and limit nongovernmental activities in the country.

According to a report by the Catholic Church's Office on Human Rights, seven incidents of threats against human rights defenders were reported between January and May.

On February 10, Jose Luis Urbano, the president of the local NGO Civil Association for the Right to Education, was shot in Anzoategui State a day after he gave a press conference where he criticized the state of the public education system.

COFAVIC's executive director continued to operate under threats of personal harm. On October 3, a local judge summoned COFAVIC's director to hear her testimony that the government continued to suggest that the threats against her were fabricated to convince the courts to overrule an Inter-American Court of

Human Rights ruling that she should be protected by a security detail; however, the trial was postponed and had not resumed by year's end.

OVP's director received numerous death threats during the year.

Leaders of the NGO SUMATE, Maria Corina Machado, Alejandro Plaz, Luis Enrique Palacios, and Ricardo Estevez, remained free pending trial at year's end. They had been ordered to stand trial in 2005 for conspiracy to destroy the country's republican form of government due to the group's acceptance of funds from a foreign source in 2003; in 2006 the trial was indefinitely postponed.

There were no developments in the National Assembly's separate investigation, begun in 2006, of the SUMATE leadership for treason, conspiring against the National Electoral Council, and inciting criminal activity.

Country Report on Human Rights Practices-Venezuela, Bureau of Democracy, Human Rights and Labor, U.S. Department of State, dated March 11, 2008.

Numerous letters in support of the applicant's persecution waiver application have been provided. As stated by [REDACTED], Venezuela Desk Officer, U.S. Department of State,

... [REDACTED] [the applicant] is a Venezuelan national and prominent civil society leader, who has worked tirelessly on issues of human rights and democracy in Venezuela for over ten years.

His connections with international civil society groups have made him an expert at raising foreign funds to aid Venezuelan civil society. He has assisted 33 NGOs in Venezuela to receive international funding as well as given counsel to dozens of other groups.

The situation for human rights and democracy activists in Venezuela is precarious. Many receive threats from government supporters and some have been killed. More frequent, however, is subtle intimidation or prosecutions on spurious charges, exclusion from government employment and services, blacklisting of citizens who oppose the government, and politically-motivated tax audits, to name a few.

case is especially sensitive because of his criticism of Venezuela's deteriorating democracy in international fora. He was selected as one of a handful of pro-democracy leaders to meet with President Bush in the UN Roundtable Discussion on Democracy. Another Venezuelan NGO leader who similarly met with President Bush is facing charges of civil rebellion for receiving a NED grant and has been denied permission to leave the country. The Venezuelan government has been considering legislation that would prohibit

One who would definitely face persecution by the regime if he were to return to Venezuela is [REDACTED] [the applicant], president of Consorcio Justicia, an NGO that defends human rights and provides judicial oversight. I worked closely with [REDACTED] when I was in the embassy in Caracas and it was during my tenure that we awarded him a Fulbright grant for study in the United States so I know him well.

[REDACTED] has been an outspoken critic of human rights violations, corruption, and efforts to curtail the rule of law by members of the regime. He has denounced these crimes and corrupt practices before international bodies such as the Organization of American States for which the regime has labeled him a traitor. Consorcio Justicia received support directly from the U.S. National Endowment for Democracy (NED) an institution that has incurred the wrath of Chavez for its work in support of democracy in Venezuela, work that Chavez claims is the means whereby the U.S. Government seeks to overthrow him.

Such courageous actions in defense of human rights and democracy have put both himself and his family at risk. For the past several years, [REDACTED] and his family have received anonymous, threatening telephone calls, they have been harassed and photographed in public places in order to intimidate him, and both he and his wife have been followed in their cars numerous times. Once, a friend who worked for the government was instructed to inform [REDACTED] that the military intelligence agency had opened a file on him and that if he were not careful things could go badly for him. It was at that point that he decided to accept the Fulbright grant and come to study in the U.S. Although he has returned to Venezuela several times since then, he has always done so fearing that some harm could come to him or his family.

Since the regime has now begun an offensive against its opponents, there is a real and present danger that [REDACTED] might be physically harmed or arrested if he returns to Venezuela. As it is now well-established that there is no longer an independent judiciary in Chavez's Venezuela, those charged with crimes by the regime can not hope for justice. If [REDACTED] were to be arrested on trumped up charges, he might be tortured to elicit a confession, as others have been. If brought to trial, he would surely be convicted and suffer a long imprisonment in some of the most inhumane jails in Latin America. The reality is such that he might be mistreated or even killed in Chavez's jails.

Letter from [REDACTED], dated March 7, 2005.

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. As clearly and extensively documented in the record, the AAO finds that the applicant has established that he would be persecuted in Venezuela on account

of political opinion, based on his past and present involvement as a high profile opponent of the Venezuelan government.

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.