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U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUL 03 2008

IN RE:

[Redacted]

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:

[Redacted]

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 Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Center 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 Uzbekistan, obtained J-1 nonimmigrant exchange status in February 2001 to participate in a program financed by the U.S. government. She 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 center director found that the applicant had failed to establish she would be subject to persecution if she returned to Uzbekistan. *Center Director's Decision*, dated November 1, 2007. The application was denied accordingly.

In support of the appeal, the following is provided: a brief, dated December 27, 2007; duplicate copies of items previously submitted; two letters of support; a certified translation of excerpts from the applicant's spouse's book "Sketch of Uzbek Opposition"; and a letter confirming the applicant's participation in a weekly radio program, dated December 21, 2007. 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 her political opinion if she returned to Uzbekistan, the applicant states as follows:

...My husband, [REDACTED], is also from Uzbekistan. At the time of the collapse of the Soviet Union, my husband was in college and was Chief of the Youth Organization of the opposition party, The Erk (Freedom) Democratic Party. Erk's platform was independent (sic) for Uzbekistan, a multi-party democratic system, a market economy, private enterprise and land reform.

The Erk Party leader, Muhammad Salih, ran for President of Uzbekistan in 1991, but lost. The Erk Party drew a lot of support and caused the Uzbekistan government to ban it and all opposition parties. The Uzbek government began to repress the Erk party and harass their members. The Party property was

confiscated; bank accounts frozen, party headquarters forced to close and those known to be with the Party were arrested....

While in Turkey, my husband continued his activities of writing about human rights abuses in Uzbekistan in opposition journals. He wrote articles about human rights abuses in Uzbekistan, helped to write books and appeared on radio programs critical of the dictatorship government in Uzbekistan. Government officials knew about his political views and activities and warned him to take charges against him, but did nothing at the time.

When my husband completed his studies in Turkey, he knew he could not return to Uzbekistan. He knew that if he went back, he would be arrested because of his views and activities. The Uzbekistan authorities tried to persuade the Turkish government to assist them to stop his activities and to help them get him back to Uzbekistan....From 1995 to 1999, Uzbek authorities followed my husband in Turkey....

So in November 1998, he applied for asylum through the United Nations Commissioner for Refugees. In April 1999 he was granted refugee status, and in November 1999 came to the United States as a political refugee...

...During all these years being with a person who is actively involved in politics changed my understanding and views on the Uzbek government and its ruling the country. I have become partially involved in his critics and writings by expressing my opinions and beliefs. For few times I was interviewed by Radio Liberty on current events in Uzbekistan. I had to express my opinions and to talk about the cruel life style and abused human rights in Uzbekistan. I had personally to prepare some of my husband's speeches for him to discuss during his interviews for Radio Liberty. I helped to gather necessary documents and to translate them for the book that my husband wrote.

Currently I have been actively helping and supporting refugees who were brought from Andijan city, Uzbekistan through United Nations. My husband and I have been helping them to adjust to a new environment, to learn English, to look for a job and other necessary activities....

...I strongly believe that because my husband is extremely wanted by the Uzbek authorities as well as being blacklisted, my life and the lives of my innocent children will be in grave danger if I have to return to Uzbekistan. I am deadly afraid that now when I have a different political opinion and my name was heard on the worldwide broadcasting media Radio Liberty I will be personally targeted by the Uzbek authorities as active human rights activist. I strongly believe that I will be hunted and harassed by our cruel executioners in order to get hands on

my husband as well. I could even be put in jail because of my political views and my relationship with [REDACTED]....I fear that my children may become a subject to the assaults and threats....

...The Uzbek authorities know my husband's political views and his current activities, which why he was blacklisted in the 1st degree list. The biggest fear of returning back home is that I will be persecuted, harassed and abused as human rights activist....

Letter from [REDACTED], dated May 31, 2006.

As further stated by counsel, in pertinent part:

...Uzbekistan is a recognized oppressor of human rights...

The respondent [the applicant] provided evidence demonstrating first, that she would be persecuted for her political opinion in Uzbekistan, and second, that her husband's position as a prominent Uzbek dissident would make her even more of a target if forced to return to Uzbekistan....respondent has provided commentary critical of the Uzbek's regime treatment of Muslim women for his radio show...many times using her own name....

As a result of respondent's political beliefs and these actions, the respondent has gone on the record as an opponent to the current Uzbek leadership....

Respondent has the type of political opinion that leads to persecution in the form of arrests and forced psychiatric treatment in Uzbekistan. Proof has been provided that respondent holds these political opinions, and that respondent has provided commentary critical of the Uzbek government under her own name that was broadcast over Radio Free Europe/Radio Liberty. The State Department is on the record stating that persecution for political opinions, such as the respondent's, frequently result in arrests and forced psychiatric treatment. This type of political opinion is controlled by law in Uzbekistan, and given the respondent's vocal expression of her political beliefs and the frequency of persecution of these types of beliefs in Uzbekistan, it is more likely than not that the respondent will be persecuted for her beliefs if forced to return to Uzbekistan.

In addition to the dangers respondent will face because of her own actions, she also will be targeted because of her relationship to her husband, [REDACTED]

....

...a substantial amount of the manifestation of the respondent's political opinions has taken the form of support for her dissident husband. Given Mr. [REDACTED]'s

political background it should not be surprising that this type of support should occur, and respondent fears that the Uzbek government would come to this same conclusion if she were forced to return to Uzbekistan....

...If respondent were forced to return to Uzbekistan, not only would it be more likely than not that she would be persecuted for her political opinions because of her activities with Radio Free Europe/Radio Liberty, but respondent would more likely than not be targeted for her political beliefs anyway because of her relationship with [REDACTED]....

Brief in Support of Appeal, dated December 27, 2007.

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

Uzbekistan is an authoritarian state with a population of approximately 27.3 million.

Citizens did not have the right in practice to change their government through peaceful and democratic means. Security forces routinely tortured, beat, and otherwise mistreated detainees under interrogation to obtain confessions or incriminating information. In several cases authorities subjected human rights activists and other critics of the regime to forced psychiatric treatment. Human rights activists and journalists who criticized the government were subject to harassment, arbitrary arrest, politically motivated prosecution, and physical attack. The government generally did not take steps to investigate or punish the most egregious cases of abuse, although it prosecuted many officials for corruption. Prison conditions remained very poor, and outside monitors did not have full access to places of detention. In many cases those arrested were held incommunicado for extended periods without access to family or attorneys. Criminal defendants were often deprived of legal counsel. Guilty verdicts were almost universal and generally based upon defendants' confessions and witnesses' testimony obtained through coercion. The government tightly controlled the mass media and treated criticism of the regime as a crime. The government did not observe citizens' right to free assembly or association; police regularly detained citizens to prevent public demonstrations and forestalled contact with foreign diplomats. Authorities sought to control all nongovernmental organization (NGO) activity and forced the de facto closure of Human Rights Watch (HRW), one of the last international human rights organizations in the country. The departure of international human rights organizations from the country negatively affected the ability of foreign embassies to report on human rights violations. The government also limited access for international observers at trials....The government pressured other

countries to return forcibly Uzbek refugees who were under the protection of the Office of the UN High Commissioner for Refugees (UNHCR)...There was a widespread public perception of corruption throughout society.

During the year police frequently and arbitrarily arrested or detained individuals for expressing views critical of the government.

Police harassed and sometimes arbitrarily detained members of the opposition Birlik, Free Farmers, and Erk parties.

The constitution and law provide for freedom of speech and the press; however, the government generally did not respect these rights in practice.

The law limits criticism of the president, and public insult to the president is a crime punishable by up to five years in prison. The law specifically prohibits articles that incite religious confrontation and ethnic discord or advocate subverting or overthrowing the constitutional order.

The wave of government harassment against journalists sparked by the 2005 Andijon events continued during the year. Police and security services subjected print and broadcast journalists to arrest, harassment, intimidation, and violence, as well as bureaucratic restrictions on their activity.

Country Report on Human Rights Practices-Uzbekistan, 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], Chairman of the Central Committee of the Democratic Party "Erk",

... [the applicant's spouse] is one of the active party's members since 1993. He had done his great contribution into party developing and organization by propaganda among Uzbek youth. Until today he helps to publish and distribute the official newspaper of the Democratic Party 'Erk'. In Uzbekistan the name of [REDACTED] is well known as he gives many interview on the Radio Liberty and Voice of America, he publishes his articles and book about Uzbek opposition; therefore for his different political views and opinions he is blacklisted and wanted by the Uzbek authorities. His wife, [REDACTED] [the applicant], is also one of the members of the Democratic Party 'Erk'. Since 2003 she has been helping in development of the party activities by contributing her knowledge of many languages and humanitarian help. As she is fluent in many languages such as Russian, English, Turkish and [REDACTED] helps to translate many articles for the official newspaper 'Erk' and to publish them on our web site....

In this condition, as being partially involved in the oppositional party's activities and has oppositional views and opinions [redacted] will put her life and the lives of her children under the danger and threat if she returns to Uzbekistan. Just being involved in 'Erk' party's activities the Uzbek authority will find her as dangerous to the government regime and will definitely prison her for her views and opinions. Not only being a member of the oppositional party 'Erk' but also just reading or having publications of the Democratic Party 'Erk' is considering a crime in the eyes of the government.

...it is will known to the world community such as Human Rights Watch, Amnesty International and from the reports of the U.S. Department of State that Uzbekistan is one of the most repressive countries....

Letter from [redacted] Chairman of the Central Committee of the Democratic Party "Erk", dated December 19, 2007.

A letter from [redacted], broadcaster for Radio Free Europe/Radio Liberty, confirms the applicant's vocal criticism of the Uzbek government. As stated by [redacted],

...I am [redacted] ..broadcaster U.S. Congress funded Independent of Radio Free Europe Radio Liberty.

I confirm that [redacted] [the applicant] participated many times in my weekly radio programs "Davr mening taqdirimda" (Time in my destiny) during 2006 and 2007.

[redacted] told our listeners about programs of women's rights in Uzbekistan and criticized Uzbek government persecuting moslem women.

During radio programs she did not use nickname and told listeners her real name....

Letter from [redacted], dated December 21, 2007.

Section 212(e) of the Act requires that the applicant establish that she would be persecuted upon return to her country of nationality or last residence, a very high standard. The AAO finds that the applicant has established that she would be persecuted in Uzbekistan on account of political opinion, based on her past and present involvement as a high profile opponent of the Uzbek government, as clearly documented in the record, and due to her marriage to her spouse, an outspoken critic of the Uzbek 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 her 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 center director so that he 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 center director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.