

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

713

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 22 2008**

IN RE: Applicant: [REDACTED]

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:

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.

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

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 appeal will be dismissed.

The applicant is a citizen of Ukraine who obtained J-1 nonimmigrant exchange visitor status in August 2000. The applicant is 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) based on U.S. government financing. The applicant presently seeks a waiver of his foreign residence requirement, based on the claim that he will be persecuted based on his religion if he returns to Ukraine.

The director concluded that the applicant failed to establish that he would be persecuted were he to return to Ukraine for a two-year period. *Director's Decision*, dated October 3, 2007. The application was denied accordingly.

In support of the appeal, the applicant provides a letter, dated October 12, 2007 and referenced attachments. 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 at 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. In this case, the applicant contends that he qualifies for a waiver based on persecution on account of religion.¹

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

I am Pentecostal Christian, accepted Christ in the summer of 1998 and was attending New Life Church in Kiev Ukraine since January 1999. I never was hiding my beliefs. In fact Bible states that we are to go and spread the word of Gospel. The word protestant in Russian means the same as in English—the one who protests. As soon as I would tell people I was Christian and of Protestant Denomination, Pentecostal in particular, they would completely change their facial expression. Active listening turned into ignorance, disgust, and verbal abuse. Police and Russian Orthodox for some reason did not like me being Protestant at all. They called me a sectant, an American spy, would threaten me physical harm.

An incident happened one Wednesday in the Spring of 1999. Each Wednesday our church had an evangelism day, where we gave out booklets and talked about Christ out on the streets. My friend also a church member and I stood on the corner and saw 2 people running towards us. One was dressed in black robe—he

¹ The applicant makes numerous references to past instances of persecution based on skin color and accent due to mixed ethnicity. Such incidents may evidence that the applicant has a well-founded fear of persecution based on membership in a social group and/or nationality in an asylum or refugee application, but may not be considered in a section 212(e) waiver request, as discussed above.

was a priest of Russian Orthodox church and the other was dressed in regular cloth. They screamed: 'What are you doing here? Who gave you the right to be here? Why are you speaking about Christ? Who are you?'

We said that we were members of Pentecostal church right up the street. They kept yelling at us. They called us American spies and devil worshippers. They said we had no right to speak about God. It is only the Orthodox Church and the Catholics allowed, since they have a line of ordained servants. We said that the bible contradicted their statement. It made them very mad. They pushed us out of the walkway and were yelling very loud. We blessed them and decided to leave quick. My friend told me that it is typical reaction from Russian Orthodox Church—a dominant religion in Ukraine.

Declaration of

With respect to the fact that the applicant is a Pentecostal Christian, it has not been established that such practice would lead to persecution in Ukraine. "[P]ersecution does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional." *Fatin v. INS*, 12 F.3d 1233, 1240 (3rd Cir. 1993). Moreover, no evidence has been provided to indicate that Ukrainians in general would be aware of the applicant and his beliefs, let alone that the Ukrainian government would demonstrate hostility towards the applicant if it was. Finally, the U.S. Department of State makes no reference to incidents of persecution of Ukrainians based on their religious beliefs. As the U.S. Department of State states, in pertinent part:

The Constitution and the law on freedom of conscience provide for freedom of religion, and the Government generally respected this right in practice; however, there were isolated problems at the local level due to local officials taking sides in disputes between religious organizations.

There was no change in the status of respect for religious freedom during the period covered by this report. Government policy continued to contribute to the generally free practice of religion.

A 2007 survey by the independent think tank Razumkov Center found that 40 percent of the respondents considered themselves believers not belonging to any denomination, while 36.5 percent consider themselves to be believers of a particular religious organization. Of the latter group, 33 percent affiliate themselves with the Ukrainian Orthodox Church-Kyiv Patriarchate (UOC-KP), 31 percent with the Ukrainian Orthodox Church-Moscow Patriarchate (UOC-MP), 18 percent with the Ukrainian Greek Catholic Church, and 2.5 percent with the Ukrainian Autocephalous Orthodox Church (UAOC). Less than 5 percent of those surveyed declared themselves Roman Catholics, Protestants; Muslims, or Jews. Almost 21 percent of the respondents declared that they do not believe in God.

According to the 2007 survey, of those who considered themselves believers of a particular religious group, 33.5 percent said they attend religious services 1-2

times per year; 23 percent once in several months; 14.4 percent 1-3 times per month; 8.8 percent once per week; 2 percent several times per week; 6.4 percent once in several years; and 9.3 percent almost never. Almost 90 percent of religiously active citizens are Christians, the majority Orthodox. Religious practice is generally strongest in the western part of the country.

Protestant churches have grown rapidly in the years since independence. In Donetsk Oblast, which many consider to be dominated by the UOC-MP, more than 600 of the 1,371 registered religious communities are Protestant. The Evangelical Baptist Union of Ukraine (the Baptist Union) is the largest group, claiming more than 300,000 members in more than 2,800 churches, with 3,160 clergy members. Other growing communities include Anglicans, Calvinists, Jehovah's Witnesses, Lutherans, Methodists, the Church of Jesus Christ of Latter-day Saints (Mormons), Pentecostals, Presbyterians, and Seventh-day Adventists.

The Constitution and the law on freedom of conscience provide for freedom of religion, and the Government generally respected this right in practice. The Government at all levels generally sought to protect this right in full and did not tolerate its abuse, either by governmental or private actors.

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

As referenced above, the U.S. Department of State recognizes that the Constitution and the laws in Ukraine provide for freedom of religion, confirms that the Pentecostal church is growing and specifically states that the Ukrainian government protects religious freedoms and does not tolerate abuse on account of religion. Section 212(e) of the Act requires that the applicant establish that he would be subject to persecution upon return to his country of nationality or last residence. The applicant's past experiences do not amount to persecution and the record does not indicate that the applicant would be persecuted in the future based on his religion. As such, the AAO finds that the applicant has failed to establish that he would be persecuted in Ukraine on account of religion.

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 not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.