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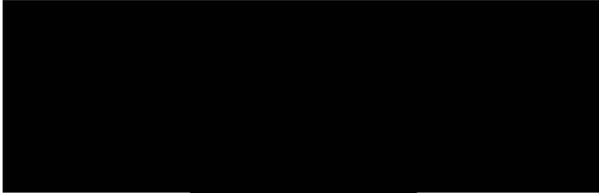
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 08 2008

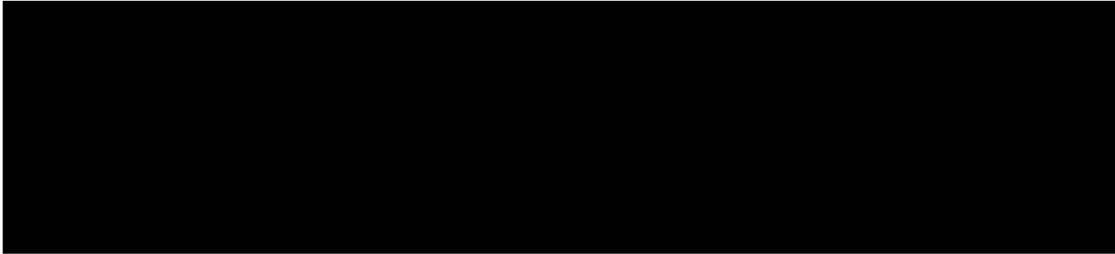
IN RE:



APPLICATION:

Application for Waiver 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 appeal will be dismissed.

The record reflects that the applicant, a native of Iran and a citizen of Canada, obtained J1 nonimmigrant exchange status in October 1993 to participate in graduate medical training. 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 religion and imputed political opinion.

The director found that the applicant had failed to establish she would be subject to persecution if she returned to Iran. *Director's Decision*, dated May 4, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated June 25, 2007 and additional documentation relating to conditions 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). In addition, dress and conduct rules concerning women in Muslim countries have been found not to constitute persecution. *Fisher v. INS*, 79 F.3d 995, 961-962 (9th Cir. 1996) *Sharif v. INS*, 87 F.3d 932 (7th Cir. 1996).

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 religion and/or political opinion if she returned to Iran, counsel submitted an affidavit written by the applicant. As stated by the applicant,

...My beliefs as an Agnostic would result in persecution, as Iran follows the very conservative Islamic Sharia law. Furthermore, the fact that I have spent a great deal of time in the United States and Canada would put me in a position where others would associate me with America. Anti-Western sentiment is high, and I fear that I would be targeted due to my close association with the United States....

I no longer practice or follow the teachings of Islam. I consider myself to be Agnostic. I am a firm believer in freedom of religion. I believe that women's independence can be reconciled with the teachings of Islam, or any religion. Unfortunately, the Sharia law that is enforced in Iran does not allow for my belief....

...Since leaving Iran, I no longer wear a veil or dress in the conservative way required by Iranian and Sharia Law. Iranian law requires that clothes cannot be form fitting and ankles and wrists should not be seen. Moreover, unlike many other Islamic countries, Iran is very strict about the head covering. If I return to Iran, I will be forced to dress in this way. Not doing so can result in severe punishment, including lashings and imprisonment. When I was in Iran, I received several notices from the Islamic police for not following the exact protocol for head covering. Once again, if I do not forgo my own religious beliefs regarding my freedom to dress as I wish, I will certainly be persecuted.

Because I no longer practice Islam and consider myself to be Agnostic, I fear that I will be targeted, arrested and tortured by the government. Religious tolerance does not exist in Iran. Other than Islam, the government only recognizes Christianity, Judaism and Zoroastrianism. However, Christians, Jews, B'hais and Sufi Muslims are frequently harassed, intimidated and falsely imprisoned because of their beliefs. The fact that I do not practice Islam, do not have certainty in the existence of a god and do not believe in the existence of religion will likely result in my arrest if anyone should find out. Although this is not information that I would divulge or make public, it is information that could easily be surmised. Once I reach Iran, I will not attend the mosque or participate in any religious festivals or holidays....

...The fact that I am of Iranian heritage will not deter extremists from viewing me as American. We have in recent times witnessed Muslim extremists commit terrorist acts targeting Muslims in Muslim countries due to the particular government's perceived cooperation with the United States. These extremists have shown they do not think twice about killing other countrymen, and my American identity is enough to place me at risk....

Affidavit of [REDACTED], dated November 13, 2006.

To begin, with respect to the applicant's agnosticism, it has not been established that such practice would lead to persecution in Iran. Although the documentation provided confirms that religious minorities in Iran are oftentimes subject to discrimination, it has not been established that they are being persecuted. "[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 Iranians in general would be aware of the applicant and her agnostic beliefs, let alone that the Iranian government would demonstrate hostility towards the applicant if it was. Finally, although apostasy, specifically conversion from Islam, is punishable by death, there were no reported cases of the persecution of apostates during the reporting period. *International Religious Freedom Report-2007, Released by the Bureau of Democracy, Human Rights and Labor*, September 14, 2007.

Counsel notes that "...Iranian law now says murder charges can be dropped if the accused can prove the killing was carried out because the victim was morally corrupt....These laws, which allow civilians to take the law into their own hands and kill those they think are morally corrupt, place [redacted] [the applicant's] life in extreme danger...." *Brief in Support of Appeal*, dated June 25, 2007. However, based on the information provided by counsel, such incidents have occurred a handful of times, and it has not been established that the applicant's agnosticism would lead an Iranian to determine that she is morally corrupt and subject her to persecution. If that were the case, all persons residing in Iran who are not Moslem, or that have had connections to the United States, would be persecuted by Iranian citizens due to their finding of moral corruption. That does not appear to be the case.

In addition, the AAO notes that as stated in *Sharif v. INS*, "...although few 'pro-western' persons would relish the idea of living in accord with Iran's conservative social mores, living in accord with conservative social mores is not equivalent to persecution per se. The applicant has offered no evidence to suggest that conforming to Iranian law is tantamount to torture..." In this case, the applicant has demonstrated that she is willing and able to live in conformity with Iranian law; she did so for over thirty years.

Finally, with respect to the applicant's claim that she would be persecuted based on imputed political opinion, the AAO notes that no evidence has been provided to establish that Americans, or persons who have previously resided in United States, are being persecuted. Although the U.S. Department of State warns Americans about travel to Iran and its inherent risks, it makes no mention that traveling to Iran will lead to their persecution. As such, it has not been established that an Iranian national who has lived in the United States for a number of years would be persecuted based on her imputed political opinion.

Section 212(e) of the Act requires that the applicant establish that she would be subject to persecution upon return to her country of nationality or last residence. The statute requires that the applicant establish she would be persecuted, a very high standard. The applicant's fears, while perhaps well-founded, do not amount to persecution. As such, the AAO finds that the applicant has failed to establish that she would be persecuted in Iran on account of religion and/or on account of imputed political opinion.

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 her burden. Accordingly, the appeal will be dismissed.

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