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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

H3

[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 22 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.

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 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 citizen of Azerbaijan, obtained J-1 nonimmigrant exchange status in February 2001 to participate in a program financed in part 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 director found that the applicant had failed to establish she would be subject to persecution if she returned to Azerbaijan. *Director's Decision*, dated October 15, 2007. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated November 13, 2007; a copy of an emergency recusal motion, dated October 31, 2007; a letter from the applicant and her spouse, dated October 30, 2007; two previously issued decisions from the AAO; case law with respect to waivers; a copy of the Form I-797, Approval Notice for Form I-130, Immigrant Petition for Alien Relative, dated July 9, 2007; and additional documentation regarding country conditions in Azerbaijan. 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 Azerbaijan, the applicant states as follows:

I am a physician and also a journalist. I graduated from the Azerbaijan State Medical University in 1995. In 1994, while in medical school, I started to volunteer as a writer for the first independent broadcasting TV and radio station in my home country, the 'Azerbaijan News Service' (ANS). This position was my entrance into journalism. After graduating from medical school in 1995, I accepted a part-time reporter position at ANS. While working at ANS, I covered news in medicine, economic development, and also was involved in investigative reporting covering development of the anti-corruptive and institutional reforms in the country. From 1995 to 2001, I combined part-time journalism work with part-time positions in medicine. In the 1990s, after Azerbaijan became independent following the collapse of the Soviet Union, there was much

optimism in the air about prospects for development of a democratic and just society. As you will see, things have taken many turns for the worse....

Severe violence against journalists is well documented by numerous rights organizations.... My journalistic background and intimate familiarity with political opposition made it clear to me that the timing of my return to Azerbaijan...would have been of particularly high suspicion to the Azerbaijan Ministry of Internal Affairs and Ministry of National Security (MNS)....

Learning about the murder of my friend and professional colleague ██████████ ██████████ in March 2005 solidified my decision to move to Canada. In 1995, I befriended ██████████ during a trip to Moscow, Russia as part of a four-person Azeri delegation.... In 1997, I was promoted to the position of a newsroom director at ANS and then to the deputy editor of the company. It was in that capacity that I interacted with local investigative journalists, including ██████████, then the editor-in-chief of the Bakinskiy Boulvar newspaper and the Monitor magazine. I shared his ideals of democracy and free press, which strengthened our professional bond. His assassination on March 2, 2005 was one of the indications that the government was beginning to remove opposition in preparation for the November 2005 parliamentary elections that were promising to cause significant unrest....

Further reason to be concerned about my personal safety upon return to Azerbaijan was the information about arrests of my former colleagues and supervisors at the Ministry of Health. It started with the arrest of Ali Insanov, the Minister of Health of Azerbaijan Republic on October 19, 2005. I knew that my very close professional association with ██████████ would have been sufficient reason for government agents to detain and interrogate me.

This concern of detention upon my return was strengthened when I learned that my former direct supervisor and a close colleague at the Ministry of Health Institute of Lung Diseases, ██████████ was also arrested shortly thereafter in October 2005. A total of 16 associates of ██████████ were rounded up without just cause. Almost all departmental chiefs of the Ministry of Health were arrested shortly after that without a clear reason. The outcry of many human rights groups was to no avail....

The most direct evidence of a threat to my safety in Azerbaijan came to light when I learned about the death of my father, ██████████. I learned about my father's death from my mother almost one month after the event. My mother's reason for this delay was to make sure that I would not travel to Azerbaijan for the funeral, which she felt would place me in harm's way. My parents considered it very dangerous for me to come to Azerbaijan on

the basis of events that my mother described to me much later. She told me that my father was harassed by the government agents who were interested in me.

She told me that on October 22, 2005 two men in plain clothes approached my father, who was returning home after a walk to the grocery store nearby our apartment building. They asked for me by name. He asked who they were and why they were inquiring. He was then threatened that if he didn't cooperate with the government he would be putting his family and himself in harm's way. When he informed them that I was not home, they replied that they were aware that I live in the United States. They asked when he was expecting that I would be coming back to Azerbaijan. They told him to encourage me to return to Azerbaijan soon. They also made it clear to my father that they would know if he or anyone else were to encourage me to stay abroad. There was no doubt in my father's mind, as my mother recalls, that someone in the government wanted to question me, either based on my journalistic experience or my working relations with arrested high ranking officials from the Ministry of Health.

...My mother told me later that both of my parents were regularly approached outside their home by agents in plain clothes who continued to threaten them, demanding that they pressure me to return. They also received anonymous phone calls asking for me. The government agents were very clear that our failure to cooperate could lead to putting them both in jeopardy, as well as my sister....

On May 18, 2006, my father lost consciousness at home and my mother took him to the National Oncology Center.... He was admitted to the intensive care unit with extremely low blood pressure, bloody vomiting, and bloody bowel movements. The physician on call started transfusion of several units of blood. In the morning when the attending physician came to do rounds, he discussed my father's condition with my mother. He told her that if my father were to continue to lose blood he would need surgery.

However, later that day he told my mother in confidence that he received orders from his superiors to stabilize my father without a definitive diagnosis or exploratory surgery. My father was discharged from the intensive care unit of the National Oncology Center on May 21, 2006 for home care without any diagnostic tests done, except for the blood test showing signs of acute bleeding....

My parents were told by the government agents who met them at the exit of the hospital that if my father would need medical help anywhere in Azerbaijan, I must accompany him. It was clear in my parents' mind that had I returned to Azerbaijan to take care of my father, the government would have detained me.

On May 28, 2006, my father died at home from gastrointestinal bleeding with my mother helplessly watching....

...my father's medical care was very discordant with the severity of his condition. Nepotism in Azerbaijan works both ways; that is, if someone is anti-government, his or her entire family may be harassed and persecuted.... I am afraid that my journalistic experiences and close working relations with the imprisoned [REDACTED] Insanov and his ministry colleagues were reasons why my parents were harassed and why my father was deprived of medical care appropriate for his condition....

The aforementioned facts and circumstances convinced me that returning to Azerbaijan would end up in politically motivated detention and persecution. There is no basis to believe that those facts or political circumstances are going to change. As I write today, authorities have just dismantled the transmitting station of the ANS news company I worked for. The same day 30 people protesting the government's closure of the progressive newspaper Azadliq were detained....

Affidavit of [REDACTED] dated February 6, 2007.

The applicant and her spouse further elaborate:

...In the statement of exceptional hardship it was outlined that the imprisoned were [REDACTED] the applicant's] medical colleagues from the Ministry of Health.... Those officials [REDACTED] and [REDACTED] were high-ranked physicians who were suspected of participation in the attempted anti-government coup. [REDACTED] had a long history of professional relations with those individuals. Those people remain in prison today and all of their close colleagues and relatives were questioned, detained, and persecuted in one way or another. There was a journalist colleague and friend described in the application. That individual, [REDACTED] was assassinated....

...At the peak of anti-government protests in 2005, including the attempted return of the opposition leader...to Azerbaijan from the U.S.A., [REDACTED] was also in the U.S.A. and having to return to Azerbaijan because of the end of her allowed visa stay. Then [REDACTED] medical director, the former minister of health [REDACTED], was first detained for anti-government activities and later convicted on fabricated non-political charges. His colleague and [REDACTED] direct supervisor, [REDACTED] was also arrested merely because of close association with [REDACTED]. Many other more distant associates of [REDACTED] were removed from their positions. [REDACTED] as just as closely associated of Dr. [REDACTED]. Furthermore, [REDACTED] s father was pressured by [REDACTED]

the government agents to convince ██████ to return to Azerbaijan. That pressure ultimately led to the death of ██████'s father who was left without treatment and bled out to death at home just because he would not persuade ██████ to come back to Azerbaijan. We considered those events to represent a 'sufficient direct evidence' that some elements in Azerbaijan government have an intense interest in ██████. The same kind of interest that they had in already imprisoned doctors listed earlier.... The relatives of ██████ are fighting for his release, as well as his colleagues from the academy of science in Russia, but to no avail. If ██████ were to return we fear she will succumb to the same treatment of incarceration....

...The pressure placed on ██████ family, as outlined in the application, led to the death of her father. We cannot think of any greater danger than that resulting in her father's death. It is not a secret that autocratic governments such as Azerbaijan violate human rights covertly because they are concerned with their international image. They are good at covering up the violations of human rights and democracy....

...Having parents in Azerbaijan provides no safety net to those in political opposition, but only creates additional vulnerability.... The government traditionally endangers family members of political adversaries to exert pressure on their targets. That's the rule in Azerbaijan, not an exception. It happens all the time to hundreds or thousands and, in the case of ██████ it happened to her father. Therefore, ██████ mother in Azerbaijan is more of an additional vulnerability to ██████ than a safety net....

Letter from ██████, dated October 30, 2007.

As further stated by counsel, in pertinent part:

...Opposition journalists are still commonly persecuted by the Azeri government....

Persecution as a means of threatening and endangering close relatives is common... ██████'s father died prematurely (and effectively was murdered) as a result of this tactic by the Azeri government security apparatus. This speaks volumes for the seriousness of the Azeri government in its desire to capture ██████. Thus, close relatives in the home country cannot be considered a 'safety net.' To the contrary, having them in that country only increases vulnerability of the person and places the relatives in danger at the same time.

Before the victims of the Azeri government are imprisoned, the government suppression apparatus tries to leave no 'direct evidence' of persecution. Often...it operates by threatening close relatives...or physically endangering them....

Politically motivated persecutions are very much in active use by the government of Azerbaijan. Many respectable international observers have reported on false charges against persons who oppose, or are taught to oppose, the Azeri government. They would have no difficulty in fabricating charges to trap Dr. [REDACTED]

Once imprisoned, no outside pressure helps in getting opposition victims out of Azeri prisons....

Brief in Support of Appeal, dated November 13, 2007.

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

The law provides for freedom of speech and of the press and specifically prohibits press censorship; however, the government often did not respect these rights in practice. During the year the government took actions that limited media independence. The media freedom environment significantly deteriorated during the year.

Although opposition parties continued to publish newspapers, and human rights activists were able to conduct their work without fear of reprisal, the government penalized criticism from some sources.

A number of journalists who criticized government officials in the course of their work were subjected to criminal prosecution and/or civil lawsuits, some resulting in prison sentences and large fines. Journalists also were subject to harassment, threats, and acts of physical violence that appeared to be connected to their criticism of the government or specific public officials.

The Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) described the situation of the independent media in the country as "grave" in his November 15 report to the OSCE's Permanent Council.

A large number of opposition and independent media outlets operated during the year. The print media expressed a wide variety of views on government policies. However, most broadcast media adhered to a pro-government line in their news coverage.

There were several pro-opposition newspapers and magazines, and a few independent newspapers and magazines. There were 21 television and 10 radio stations. There also were several national state newspapers and numerous newspapers funded by city or district level officials. In contrast to progovernment newspapers, the distribution of many opposition newspapers was limited to the capital, and their circulation was low. Although many opposition and government-run newspapers reduced circulation in 2006, some increased circulation during the year, including prominent opposition newspapers [REDACTED]

Some private television channels broadcast the views of both government and opposition officials, but their programs were not available in all parts of the country. ANS TV, a popular channel regarded as independent, provided relatively balanced news coverage, although opposition political party leaders complained that no television stations covered their activities. In November 2006 the National Television and Radio Council (NTRC) ordered ANS to stop broadcasting on grounds that the channel had failed to comply with national media law and regulations, a charge that ANS disputed. Citing the appeals of prominent citizens, and of the human rights ombudswoman, the NTRC reversed its decision in December 2006 and allowed ANS to resume broadcasting. On April 26, the NTRC granted ANS a six-year broadcast license.

There were no restrictions on systems to receive satellite broadcasts by foreign stations, but the NTRC continued to impose a general requirement that local, private television and radio stations not re-broadcast entire news programs of foreign origin. Radio Free Europe/Radio Liberty, BBC, and other foreign stations were not subject to this requirement.

Arrest, harassment, intimidation, and violence against individual journalists continued.

Domestic and international observers considered the conviction and imprisonment of eight journalists during the year, and that of one journalist remaining in prison from 2006, to be politically motivated. Five of these journalists were released by presidential pardon in December, and two were released following the appellate courts' decisions to overturn their verdicts. The other two journalists remained in prison at year's end. Another journalist remained in pretrial detention at year's end; international and domestic observers considered his arrest to be politically motivated.

On January 9, a Baku court convicted *Nota Bene* newspaper journalist [REDACTED] on charges of libel and sentenced him to two years' imprisonment. The charges were the result of a lawsuit filed by Minister of Internal Affairs [REDACTED]. Allahverdiyev reportedly suffered from an intestinal hernia, and according to local human rights activists, his health remained critical in detention.

In December [REDACTED] underwent surgery at a government medical facility. Allahverdiyev was released by presidential pardon in December.

On May 4, a Baku court convicted *Sanat* newspaper journalist [REDACTED] and Editor-in-Chief [REDACTED] on charges of inciting religious hatred. [REDACTED] was sentenced to three years' imprisonment and Sadagatoglu to four. [REDACTED] had written an article, published in November 2006, arguing that Islamic values had prevented the country from integrating into Europe. [REDACTED] were released by presidential pardon in December.

On May 16, a Baku court convicted *Mukhalifet* newspaper journalist [REDACTED] and Editor-in-Chief [REDACTED] on charges of libel, and sentenced them each to 30 months' imprisonment. The charges were the result of a libel lawsuit filed by Member of Parliament [REDACTED] were released by presidential pardon in December.

On July 24, police arrested opposition *Bizim Yol* newspaper correspondent [REDACTED] on charges of accepting a bribe from a Ministry of Labor and Social Protection employee. The exchange was captured on video and broadcast on national television. [REDACTED] defense attorneys maintained that the incident was a set-up and declared [REDACTED] innocent. Some domestic observers considered [REDACTED] arrest to be politically motivated, while others believed him to be guilty. [REDACTED] reportedly suffered from tuberculosis. He remained in pretrial detention at year's end.

On October 30, the Baku Court of Grave Crimes sentenced the already-jailed editor-in-chief of *Realny Azerbaijan* and *Gundelik Azerbaijan*, Eynulla Fatullayev, to eight-and-a-half years' imprisonment on charges of supporting terrorism, inciting ethnic hatred, and tax evasion. These charges were based on an article Fatullayev wrote criticizing the government's policy towards Iran and listing specific locations in the country as potential targets for an Iranian attack. The sentence included Fatullayev's previous libel conviction for an article he allegedly wrote purporting that government forces may have played a role in the 1992 events in Khojali. Fatullayev remained in prison at year's end. In October 2006 credible human rights monitors reported that unknown assailants kidnapped Fatullayev's father, [REDACTED] and held him for three days. [REDACTED] father was released, reportedly after [REDACTED] agreed to cease publishing both titles in October 2006. There were no developments in the kidnapping case during the year. [REDACTED] started *Realny Azerbaijan* in 2005 after having worked at *The Monitor*, which ceased publication following the killing of its founder and editor. In 2004 unknown assailants physically attacked [REDACTED]

On November 6, a Baku court convicted *Ideal* newspaper Editor-in-Chief [REDACTED] of libel and sentenced him to 30 months' imprisonment. The libel charges were filed by a Ministry of Internal Affairs official. *Ideal* newspaper had a

reputation for racketeering, and local observers believed that [REDACTED] had accepted and demanded bribes in exchange for printing or not printing articles. The Court of Appeals overturned the first instance court's ruling on December 26, and Guliyev was released from prison.

On November 11, police arrested *Azadliq* newspaper editor-in-chief [REDACTED] on charges of hooliganism and inflicting minor bodily harm. The charges were a result of a complaint filed by private citizen [REDACTED], alleging that [REDACTED] engaged in a physical altercation with him, after Hasanov reportedly attempted to defend a woman who accused [REDACTED] of insulting her. [REDACTED] maintained that he was innocent and that the incident was a set-up. At year's end the government had concluded its investigation, and [REDACTED] remained in pretrial detention as his case pending hearing by the [REDACTED] district court.

On December 6, a Nakhchivan City court convicted Radio Free Europe/Radio Liberty correspondent [REDACTED] of libel and sentenced him to three months' imprisonment. The libel charges reportedly were based on an e-mail message [REDACTED] had sent to a government Web site, complaining about [REDACTED] police officers' treatment of journalists during the eviction of a popular market. On December 10, the Nakhchivan Court of Appeals overturned the first instance court's ruling, and [REDACTED] was released from prison. Also on December 10, a Nakhchivan City court convicted [REDACTED] of libel on separate charges and sentenced him to one year of probation. The charges were based on an article published in *Azadliq* newspaper in 2006, which detailed alleged activities of the Kurdish Workers' Party (PKK) in Nakhchivan. Both [REDACTED] and the editors of *Azadliq* newspaper denied that he ever wrote an article for the newspaper.

Publication of the Russian-language weekly newsmagazine *Realny Azerbaijan* and its Azerbaijani-language sister publication *Gundelik Azerbaijan* was suspended in May when Ministry of Emergency Situations' officials closed the newsmagazines' offices, claiming that the building had structural deficiencies. Officials confiscated office equipment and did not return it. At year's end, publication of both newspapers remained suspended.

In October 2006 the Baku Court of Grave Crimes convicted prominent political satirist [REDACTED] also known as [REDACTED] of drug possession and sentenced him to three years in prison. The Court of Appeals and the Supreme Court upheld the sentence. Human rights activists doubted the credibility of the charges against [REDACTED] and considered them to be politically motivated. At year's end [REDACTED] remained in [REDACTED]

During the year there were at least two reports of physical attacks on journalists in connection with their professional activities.

On April 20, *Gundelik Azerbaijan* newsmagazine reporter [REDACTED] was attacked by two unidentified assailants near the newsmagazine's office. [REDACTED] was struck repeatedly on the head with a metal object, and he reported that his assailants intended to stab him with a knife, but were prevented by the arrival of two of [REDACTED] coworkers. The attack took place several hours after the newspaper's Editor-in-chief, [REDACTED], was convicted of libel and sentenced to 30 months' imprisonment. Jafarov publicly identified a police officer as one of his assailants, whom he said he recognized from [REDACTED] trial. [REDACTED] filed a complaint against the [REDACTED] District Prosecutor's Office and the [REDACTED] District Police Department, and the preliminary hearing took place on December 27. Authorities had not charged any suspects in connection with the attack by year's end.

On September 28, *Impulse* newspaper reporter [REDACTED] was beaten by Ministry of Justice court bailiffs while investigating reports of a forced eviction. Gambarova was hospitalized and diagnosed with hemorrhaging of the brain, short-term memory loss, and a broken nose. She also reportedly developed spinal injuries and impaired vision as a result of the beating. At year's end the government's investigation into the incident remained ongoing.

In March 2006, unknown assailants kidnapped opposition *Azadliq* newspaper journalist [REDACTED] Ali and attacked him with a knife. No one had been charged or arrested in connection with the incident at year's end.

In May 2006, unknown assailants took [REDACTED], editor in chief of the opposition *Bizim Yol* newspaper, to a lake near Baku, ran over his legs with a car, and reportedly threatened to kill his family if he did not stop writing articles critical of the government. [REDACTED] sustained serious injuries. Authorities had not charged any suspects in connection with the attack by year's end.

In December 2006, four unidentified assailants attacked opposition *Azadliq* newspaper journalist [REDACTED] near a bus stop close to his home. [REDACTED] was hospitalized. Authorities had not charged any suspects in connection with the attack by year's end.

There were no developments during the year in the 2005 killing of the founder and editor of *The Monitor*, [REDACTED], by unknown assailants. The government characterized the killing as a terrorist act meant to destabilize the regime and opened an investigation into the case. Some human rights activists described the killing as a warning to those critical of the government, a suggestion that officials vehemently rejected. In 2005 press reports stated that the government's investigation identified two Georgian citizens, [REDACTED] as suspects.

As in 2006, there were fewer reports than in previous years that police beat journalists covering opposition rallies or other events because authorities permitted few opposition political rallies during the year. In 2005 police officers beat some journalists and detained and released others covering opposition rallies connected with the parliamentary elections.

A state regulatory agency, the NTRC, was responsible for issuing broadcast licenses and monitoring broadcasts. The Justice Ministry must register a corporation, such as a television station operating company, for it to have legal existence.

After resolving a legal dispute related to rebroadcasting, in December 2006 the NTRC assigned Voice of America and Radio Free Europe/Radio Liberty their own FM radio frequencies. Voice of America resumed broadcasting on state television on January 1. In November 2006 the NTRC ordered ANS Television and Radio to stop broadcasting, stating that ANS had 11 violations of the national media law and NTRC regulations. ANS disputed the NTRC's claim, and company officials said that ANS complied with all of the NTRC's regulatory orders during the year. Citing the appeals of prominent citizens, the NTRC reversed its decision in December 2006 and allowed ANS to resume broadcasting. ANS was required to compete in an open tender for its broadcast frequency, and, on April 26, the NTRC granted ANS a six-year broadcast license.

In the months preceding the 2005 parliamentary elections, opposition politicians consistently had free, unrestricted access to state television airtime and paid, unrestricted access to private television time, although news coverage was heavily skewed in favor of the ruling New Azerbaijan Party. While the election code includes free media access requirements, the government restricted the opposition's access to a state television channel during the 72-hour period following the attempted return of exiled opposition leader [REDACTED]

Although pro-opposition journalists openly criticized government officials, a combination of intimidation and a desire not to alienate potential advertisers led most independent journalists and editors to practice some degree of self-censorship.

Libel is a criminal offense; the law allows for large fines and up to three years' imprisonment. The government intimidated and harassed the media, primarily through defamation suits, prohibitively high court fines for libel, and measures that hampered printing and distribution of independent newspapers and magazines. The number of defamation suits threatening the financial viability of the print media continued to increase during the year, and public officials continued to file libel lawsuits against journalists. Domestic media monitors reported that public officials filed 81 libel lawsuits during the year, a steep increase from the seven libel lawsuits reported in 2006 and the 11 libel lawsuits

reported in 2005. Human rights activists believed that public officials used libel suits to prevent the publication of embarrassing or incriminating information. Government officials publicly stated that the accusations leveled by journalists were unfounded and slanderous and pointed to journalists' unprofessional behavior as the cause of the high number of defamation suits. In conferences in July and November, Presidential Administration official ██████████ stated that decriminalizing defamation would lead those subjected to libel and slander to pursue other means of resolution, and that more journalists might find themselves "victims of assault."

Most newspapers and magazines were printed in government publishing houses or on private printing presses owned by individuals close to the government. The majority of independent and opposition newspapers remained in a precarious financial position; they continued to have problems paying wages, taxes, and periodic court fines.

The government prohibited some state libraries from subscribing to opposition newspapers. The government also continued to prohibit state businesses from buying advertising in opposition newspapers and pressured private business to do the same.

Baku-based journalists reported that authorities in the exclave of Nakhchivan continued to block distribution of opposition newspapers.

As in the previous year, the government tightened enforcement on unregistered, independent newspaper vendors who mainly distributed opposition newspapers, stating that the illegal vendors created traffic hazards on city streets.

Continuing a trend from 2005, Gaya, the country's largest independent newspaper distributor, reopened some of its 20 newsstands in Baku that were torn down in 2002 by the Baku mayor's office. However, some of the newsstands remained in the custody of the Baku municipal authorities.

Country Report on Human Rights Practices-Azerbaijan, 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 ██████████:

I am a journalist and a United States citizen... In 1998, I moved to ██████████ first to work for the news agency Agence France-Presse and then for the Financial Times of London. I lived in Baku until 2003....

I first met [REDACTED] a in 1998 while she was the news room director for the Azerbaijan News Service—the first independent broadcasting news company in Azerbaijan. I was new to the country and [REDACTED] offered to introduce me to some local journalists, many of whom I noticed were in overt opposition to government.

I also noticed that [REDACTED] was fairly unique as a journalist. First, she was a Russian among mostly ethnic Azeris. She was an anchorwoman on the only Russian-language TV news program. She was also an investigative journalist, covering corruption and institutional reforms. And she had previously worked as a doctor, which in addition to raising her qualifications also greatly helped her in covering the very corrupt Azerbaijani health care system.

I have kept in touch with [REDACTED] after I left Azerbaijan and I was extremely distressed to learn about her father's unexpected death. I was not surprised to hear however about the government pressuring her parents, as this is very common. In Azerbaijan, as well throughout the former Soviet Union, authorities often target immediate family and relatives in order to pressure those who are otherwise unreachable.

I will not try to speculate what officials want from [REDACTED] these things are also usually not revealed until the last moment. I will say however that it is highly likely that the Azerbaijani government wants to question her or possibly even pressure her to provide evidence against top former health officials, such as [REDACTED] and [REDACTED] whom she knew and who were arrested last year just before the country's parliamentary elections.

The nature of the arrests was very sketchy. Government officials said that those who were arrested were being charged with corruption and plotting to stage a coup. It is very possible that their arrests were merely a purge or an attempt to rid the government of opposition voices.

...Upon returning to Azerbaijan it is also entirely possible that she could be detained or arrested, and interrogated. Furthermore, Azerbaijan's human rights violations, in particular during police detention and in the prison system, are well documented. Women are not exempt and in some case can be targeted....

Letter from [REDACTED] dated September 28, 2006.

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 Azerbaijan on account of political opinion, based on her past involvement as a high profile journalist/investigative reporter for the first independent broadcasting TV and

radio station news station in Azerbaijan and her professional dealings with individuals arrested by the Azerbaijan government due to the government's suspicions that they were participants in an anti-government coup.

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 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.