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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H3

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 02 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a combined motion to reopen and reconsider. The combined motion will be dismissed.

The applicant is a native and citizen of [REDACTED] who was admitted to the United States in J-1 nonimmigrant exchange status in February 2002. She 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 government financing. The applicant presently seeks a waiver of her foreign residence requirement based on persecution on account of political opinion.

The director determined that the applicant had failed to establish that she would be subject to persecution on account of political opinion were she to return to [REDACTED] to comply with the foreign residence requirement. *Director's Decision*, dated January 28, 2010. The application was denied accordingly.

On appeal, the AAO concurred with the director that the applicant had failed to establish that she would be persecuted on account of political opinion were she to return to [REDACTED] as required by section 212(e) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated August 17, 2010.

In support of the instant motion, counsel for the applicant submits a brief, dated September 15, 2010. 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.

The AAO, in its decision to dismiss the applicant's appeal, stated in pertinent part:

[I]t has not been established that the events in question occurred due to the applicant's imputed political opinion, specifically, her belief in democracy, to support the assertion that she would be persecuted on account of political opinion were she to return to [REDACTED]. No evidence has been provided by counsel to indicate that the [REDACTED] mafia would be aware of the applicant and her democratic ideals, let alone that the [REDACTED] mafia would demonstrate hostility towards the applicant if it was aware of these ideals. The events in question appear to relate to the applicant's representation of a coal mining company and the issue of its ownership after the death of its owner. It has not been established that the actions of

the [REDACTED] mafia were on account of the applicant's imputed political opinion, specifically, her belief in democracy. [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).

Although the applicant's ex-husband references threats towards the applicant due to her legal representation of the [REDACTED] family, it has not been established that the threats had anything to do with the applicant's imputed political opinion. As previously noted, the matters at hand appear to be private matters with respect to the ownership of a mine that do not relate to the applicant's political opinion or involvement.

The AAO notes that the U.S. Department of State does confirm that extortion and corruption in the business environment exist and further notes that business disputes may involve threats of violence and even acts of violence. The U.S. Department of State, however, does not assert that business disputes and extortion in the business environment relate to political opinion....

Id. at 6.

On motion, counsel for the applicant asserts the following:

Contrary to the assertions in the AAO decision, [REDACTED] [the applicant] has an affirmative political opinion which was known to the members of the Mafia who persecuted her on account of her political opinion.... [REDACTED] worked hard in her career as an attorney in the justice system to promote democratic values and democratic rights within the justice system. Her democracy has shaped her political opinions. In particular, [REDACTED] was working on a case that involved clients which the Mafia opposed. [REDACTED] has an affirmative political belief which has been shaped by her belief in democracy. In particular, she believes that an individual has a right to be represented by an attorney....

The AAO erred when it found that the facts in this case do not support a finding of persecution. This was not an ordinary business dispute which escalated to threats and then acts of violence. Here, [REDACTED] dared to defend her clients' best interest against the mafia. She stated that because she and [REDACTED] were ethical attorneys, they could not comply with the mafia's request to turn their clients' property over to the mafia. The [REDACTED] mafia permeates [REDACTED]

██████████ was targeted by mafia because she represented clients that the Mafia simply did not want her to represent. It was not an incident regarding a business or legal matter; rather, ██████████ received threats because she refused to yield to the Mafia's demands to stop representing her clients. Therefore, this case transcends exhortation and corruption in the business environment and the threats and acts of violence inflicted...were inflicted precisely because of the political opinion expresses (sic) by the two women, i.e. that a client has the right to legal representation and that no matter of intimidation changes this expressed opinion....

Brief in Support of Motion, dated September 15, 2010.

A nexus must exist between the Mafia's motive to harm the applicant and a protected ground, in this case, as counsel contends, the applicant's political opinion. Such nexus has not been established. The record establishes that the applicant was the head of her own private law firm in ██████████. She explains that she was a successful lawyer and won many of her cases. *Affidavit of* ██████████ dated July 20, 2009. It was not until she started representing the ██████████ that she began encountering problems with the Mafia. The applicant does not assert that she was persecuted because the Mafia opposed her democratic ideals. The applicant contends that the mafia sought to take the business over since it was very profitable. *Id.* at 1. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant did not suffer harm in the hands of the ██████████ mafia until she started representing the ██████████. If the ██████████ Mafia were persecuting individuals on account of their political opinion, in this case, the applicant's democratic ideals and her belief in an individual's right to legal representation, as counsel contends, it would stand to reason that the applicant would have been negatively pursued by the ██████████ mafia when she became a lawyer and started representing individuals, not just when she started representing the coal mine.

The applicant has not presented evidence of persecution based on political opinion. The evidence in the record establishes that she has been a victim of criminal activity in ██████████ specifically, by the ██████████ Mafia. To be eligible for a persecution waiver, the applicant must establish that the ██████████ mafia knew of, and pursued her, because of race, religion or political opinion. *INS v. Elias-Zacarias*, 502 U.S. 478, 483-84, 112 S.Ct. 812, 816-17, 117 L.Ed.2d 38 (1992). Nothing in the record establishes that the ██████████ mafia's actions directly correlated to the applicant's political opinion. Nor has any documentation been provided establishing that the ██████████ mafia in general opposes democracy and an individual's right to legal representation and/or that individuals in ██████████ that support democracy and an individual's right to legal representation are being persecuted.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the applicant has not provided any new facts to be considered. Nor has the applicant established that the decision was based on an incorrect application of law or Service policy. 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 motion, the applicant has not met her burden. Accordingly, the combined motion will be dismissed.

ORDER: The motion is dismissed.