

PUBLIC COPY

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

tlr

[REDACTED]

NOV 17 2000
NOV 17 2000

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

[REDACTED]

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 Russia who obtained J-1 nonimmigrant exchange status in 1996. 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 U.S. government financing. The applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that her U.S. citizen child, born in March 2006, would suffer exceptional hardship if he moved to Russia temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Russia. In addition, the applicant seeks a waiver based on persecution on account of race, religion or political opinion.

The director determined that the applicant failed to establish that her U.S. citizen child would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Russia. The director additionally determined that the applicant had failed to establish she would be subject to persecution. *Director's Decision*, dated June 16, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. 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 (ii), 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.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra."

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of

hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad.” (Quotations and citations omitted).

The first step required to obtain a waiver based on hardship is to demonstrate that exceptional hardship would be imposed on the applicant’s U.S. citizen child if he remained in the United States while the applicant relocated to Russia for a two-year period. As the applicant asserts, she has full custody of her child and is his primary caregiver. *Letter from* _____ dated July 13, 2009. As a single parent, she has been able to provide for her child, because she has been gainfully employed in a job that pays her a substantial wage of \$80,000 per year. At present, the applicant’s child’s father is not financially able to contribute to the child’s care. *Brief in Support of Appeal*. Finally, the applicant’s child’s father is neither a permanent resident or a U.S. citizen. Were the applicant’s child’s father required to depart the United States at some point in the future, such a predicament would leave the young child in the United States without a parent. *Brief in Support of the Form I-601*, dated June 5, 2007.

Based on the young age of the child, his dependence on the applicant for his daily emotional and financial care, the fact that the applicant’s child’s father is not a U.S. citizen or lawful permanent resident and thus, his ability to remain in the United States is not guaranteed, and due to the negative ramifications of separating a young child from his mother, his primary caregiver, as documented in numerous articles submitted by counsel, the AAO concurs with the director that the applicant's child would experience exceptional hardship were he to remain in the United States while the applicant relocates abroad. The applicant’s child needs his mother’s emotional and financial support; a separation would cause hardship beyond that normally suffered by those temporarily separated due to a two-year foreign residency requirement.

The second step required to obtain a waiver is to establish that the applicant’s U.S. citizen child would experience exceptional hardship if he resided in Russia for two years with the applicant. The applicant asserts that her U.S. citizen child will suffer exceptional hardship in Russia, due to the problematic economic conditions, societal discrimination and anti-American sentiment. As she declares,

My biggest concern and fear in a school environment with the anti-American are bound I do not want my child to develop hostile feelings toward a country that I have been trying to make his own.... Racism and anti-Americanism are widely spread and are definitely on a rise.... I am definitely simply terrified with a fact I had to go back and expose my son to this....

My family has an exceptionally difficult history of persecution based on our roots (coming from a family of anticommunist business people), ethnicity (Tatar is an ethnic minority in Russia) and religion (Muslim). My great grand father was executed when communists came to power, grand fathers from both sides were persecuted and imprisoned at different times in the 30-40 and 50s, my aunts were having difficult times being accepted to colleges, my mother (although she managed to become a medial

doctor) was mistreated at work.... My brother graduated from a school of music but in today economy and a recession in place was laid off...because of his ethnicity—Tatar Muslim ancestry. He got randomly stopped and held in Moscow and St. Petersburg by the members of militia just based on his appearance....

There is a strong possibility in today's economy in Russia, I wouldn't be able to find a stable job and provide for my son and myself. I can be rejected just based on my Tatar Muslim ethnicity and the fact that I have not lived and worked in Russia for years. With anti-Americanism developing in Russia, I also fear for my son's safety there....

Supra at 2-3.

To begin, the AAO notes that the U.S. Department of State has not issued any warnings against travel to Russia by U.S. citizens and/or lawful permanent residents. As such, it has not been established that the applicant's U.S. citizen child would be in danger were he to reside in Russia for two years due to being an American.

Moreover, with respect to the applicant's ethnicity as a Tatar, no documentation has been provided establishing that the applicant's child, the only qualifying relative in this case, would suffer exceptional hardship due to his mother's ethnicity. Nor has the U.S. Department of State referenced persecution against the Tatars in its 2008 Human Rights Report for Russia.

In addition, with respect to the fact that the applicant is Muslim, the U.S. Department of State notes that "The Russian constitution provides for freedom of religion, the equality of all religions before the law, and the separation of church and state.... While Muslims, Jews, and other religious minorities continue to encounter prejudice and societal discrimination, they have not been inhibited by the government in the free practice of their religion...." *Background Note-Russia, U.S. Department of State*, dated April 2009. The U.S. Department of State further notes that "religious matters were not a source of social tension or problems for the large majority of citizens...." *2008 Human Rights Report-Russia, U.S. Department of State*, dated February 25, 2009. Finally, the U.S. Department of State, in its International Religious Freedom Report for Russia, states that that "The Constitution provides for freedom of religion, and the Government generally respected this right in practice...The 1997 Law declares all religions equal before the law, prohibits government interference in religion, and establishes simple registration procedures for religious groups. The country is by law a secular state without a state religion. The preamble to the 1997 Law, however, acknowledges Christianity, Islam, Judaism, Buddhism, and other religions as constituting an inseparable part of the country's historical heritage..." *International Religious Freedom Report-Russia, U.S. Department of State*, October 2009.

Finally, it has not been established that the applicant will not be able to find gainful employment in Russia, based on ethnicity, race and/or gender, thereby causing exceptional hardship to the applicant's child. Although counsel has submitted articles about gender inequality in Russia, the information is general in nature and does not establish that the applicant specifically will not be able to obtain gainful employment. The AAO notes that the applicant's mother, despite her ethnicity, race and gender, has

been working as a doctor for the last 34 years. She has obtained the equivalent of a U.S. medical degree, 2 high ranking specialty levels in cardiology and in medical care administration, and has given significant scientific research input including many articles published in several major medical journals and books. *See Personal Statement of [REDACTED]* dated December 1, 2006. Moreover, the AAO notes that documentation in the record establishes that the applicant is respected in business circles in Russia and has established business relationships with a number of **design firms and companies in Russia** in her area of expertise, specifically, marketing. *See Letter from [REDACTED]*, dated July 11, 2005. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the AAO finds that it has not been established that the applicant's child would suffer exceptional hardship were he to relocate to Russia for a two-year period.

The AAO further finds that counsel has failed to establish that the applicant would be subject to persecution in Russia on account of race, religion or political opinion. 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.

With respect to the applicant's ethnicity as a Tatar, as noted above, the U.S. Department of State makes no reference to persecution against the Tatars in its 2008 Human Rights Report for Russia. In addition, with respect to the fact that the applicant is Muslim, as discussed in detail above, it has not been established that she would be persecuted based on her religion.

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 director noted correctly in her decision denying the request for a waiver based on persecution that no evidence had been submitted establishing past persecution or good reason to fear persecution from the government in power, nor is there evidence that would indicate that persecution would be inflicted on the applicant by the government in power. *Supra* at 4. On appeal, the issues outlined by the director have not been addressed by counsel and/or the applicant. As such, the AAO concurs with the director that the applicant has failed to establish that she would be persecuted in Russia on account of race, religion or political opinion.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen child will face exceptional hardship if the applicant's waiver request is denied. Although the applicant has established that her child would suffer exceptional hardship were he to remain in the United States while the applicant relocated abroad for the requisite two-year period, the applicant has failed to establish that her child would suffer exceptional hardship were he to relocate to Russia for a two-year

period. The record demonstrates that the applicant's child faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a parent temporarily relocates abroad based on a foreign residence requirement. As for the applicant's persecution claim, the applicant has failed to establish that she would be persecuted on account of race, religion or 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 will be dismissed. The waiver application is denied.