



U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

**NOV 19 2009**

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).

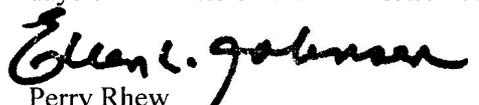
ON BEHALF OF APPLICANT:

[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.

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 Belarus who was admitted to the United States in J-1 nonimmigrant exchange status in June 2001. 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 two-year foreign residence requirement, based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Belarus 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 Belarus. The applicant also seeks a waiver of her two-year foreign residence requirement based on persecution on account of political opinion.

The director determined that the applicant failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Belarus. The director additionally determined that the applicant had failed to establish she would be subject to persecution. *Director's Decision*, dated April 17, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submitted the Form I-290B, Notice of Appeal, dated May 12, 2009. On the Form I-290B, counsel indicated that "all of the relevant factors will be discussed in the brief that will be filed within 30 days..." See *Form I-290B*, dated May 12, 2009. On June 12, 2009, the AAO received a duplicate statement from the applicant, previously submitted with the Form I-612 in January 2008, and an affidavit from the applicant's U.S. citizen spouse, dated May 15, 2009. Despite counsel's assertion to the contrary, as of today, no brief has been received by the AAO in support of the appeal. The record is considered complete and was reviewed in its entirety 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.

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 hardship waiver is to establish that the applicant’s U.S. citizen spouse would experience exceptional hardship if he resided in Belarus for two years with the applicant. This criteria has not been addressed by counsel, the applicant and/or the applicant’s spouse. As such, it has not been established that the applicant’s spouse would suffer exceptional hardship were he to reside in Belarus for two years with the applicant.

The second step required to obtain a waiver based on hardship is to establish that the applicant’s U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Belarus. With respect to this criteria, the applicant asserts as follows:

I am married to \_\_\_\_\_ who is a United States citizen and we have been married since July 16, 2003.... My husband and I have never been separated from each other since we have been married....

We depend on each other for our financial and emotional support....

I am very much looking forward to starting a family with my husband, however, we like to wait for my immigration status to clear and also for our financial situation to be more stable than it is right now.

I suffered a lot in my country because of the political and social conditions. I was involved with the United Civic Party (UCP) in 1999 and was active in political activities for that party. As a result I was the victim of extensive questioning by the opposing government in power and also

was the victim of personal attacks where I was rendered unconscious and required medical treatment....

My husband will suffer greatly knowing that I can be harmed or possibly even killed in Belarus because of my political views.

If I am not allowed to stay with my husband that will mean that I will probably never see [sic] him again because it is very difficult in my country to travel due to the political and social conditions that exist there. Furthermore, if I am returned to Belarus I will again be the victim of persecution by the government because of my political opinion and prior activities....

It is clear that if [redacted] [the applicant] is not allowed to remain in the United States, the separation from her husband would have a devastating effect on both of them. It would totally interrupt their stable life and completely destroy their psychological and emotional stability....

Furthermore, most of the jobs in Belarus are controlled by the government.... [redacted] chances of finding employment are essentially none. This would mean that [redacted] would have no means to provide for herself and she would be rendered destitute.

*Statement from* [redacted] dated November 30, 2007.

No documentation has been provided by counsel, corroborating the assertions made by the applicant with respect to the hardships she and her spouse would face were they to relocate to Belarus. While information about human rights in Belarus has been provided, the AAO notes that said information is general in nature and does not establish that the applicant would suffer human rights violations in Belarus, thereby causing hardship to her spouse, the only qualifying relative in this case. Moreover, although the applicant references that she will be unable to return to the United States when her two-year foreign residence requirement is completed due to difficulties in being able to leave her country, the AAO notes that she was able to depart the United States in 2001 to participate in a J-1 program in the United States. No documentation has been provided to establish that she would encounter difficulties in the future in returning to the United States. 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)).

In addition, while the AAO sympathizes with the applicant and her spouse regarding their desire to start a family, all couples separated by a foreign residency requirement have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of exceptional hardship. Furthermore, although the applicant's spouse asserts that he had

an unstable upbringing that lead to a self destructive path of drugs and he is not strong enough to help himself or pick himself up, no documentation has been provided to establish that the applicant's physical presence is integral to his health and well-being, and further establishing that the applicant's absence would cause him exceptional hardship. *See Affidavit of* [REDACTED] dated May 15, 2009. Finally, it has not been established that the applicant's spouse would be unable to travel to Belarus to visit the applicant, and or communicate with her regularly, to further obtain her support during her two-year foreign residence. As such, it has not been established that the applicant's spouse would suffer exceptional hardship were he to remain in the United State while the applicant resided abroad for a two-year period.

The AAO further finds that counsel has failed to establish that the applicant would be subject to persecution in Belarus on account of 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.

To support the assertion that the applicant would suffer persecution on account of political opinion if she returned to Belarus, counsel submitted an affidavit written by the applicant. As stated by the applicant in her statement, submitted with the original Form I-612 submission:

I suffered a lot in my country because of the political and social conditions. I was involved with the United Civic Party (UCP) in 1999 and was active in political activities for that party. As a result I was the victim of extensive questioning by the opposing government in power and also was the victim of personal attacks where I was rendered unconscious and required medical treatment...

*Supra* at 2.

Counsel has failed to provide any documentation which outlines the applicant's specific political involvement—past and/or present—with the United Civic Party, and counsel has also failed to document that based on this membership and/or involvement, the applicant will be persecuted. Moreover, no evidence has been provided to indicate that Belarusians in general would be aware of the applicant and her past political involvement, let alone that the Belarusian government would demonstrate hostility towards the applicant if it was. The AAO notes that the U.S. Department of State references only four incidents against members of the United Civic Party and said incidents fail to establish that the applicant herself would suffer persecution based on her involvement, which as

noted above has not been documented, with the United Civic Party more than ten years ago. As the U.S. Department of State notes:

In January and February, authorities released five political prisoners:

[REDACTED] and [REDACTED] a United Civic Party member, was jailed in April 2007 for posting an antigovernment article on his party's Web site.

[I]n June, the wife of [REDACTED]-based United Civic Party leader Vasilii Polyakov was dismissed from her job as a history teacher. The school's administration stated it would not extend her employment agreement after alleging that she did not follow "state policies."

On January 10, the Web sites of Radio Liberty, Charter 97, Belarusian Partisan, and the United Civic Party were partially or fully blocked because of their then-ongoing coverage of the demonstrations by small business owners in Minsk. Access to the Radio Liberty, Radio Svoboda, and Charter 97 Web sites was again disrupted in April prior to demonstrations marking the anniversary of the Chernobyl disaster.

On July 11, a Minsk district court sentenced United Civic Party youth activists [REDACTED] and [REDACTED] to 15 days in jail and [REDACTED] to 10 days in jail on minor hooliganism charges. Human rights advocates linked the arrests to the July 3 bombing in Minsk.

*2008 Human Rights Report-Belarus, U.S. Department of State, dated February 25, 2009.*

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 due to her political beliefs. *Supra* at 4. On appeal, the issues outlined by the director have not been addressed by counsel, the applicant and/or the applicant's spouse. As such, the AAO concurs with the director that the applicant has failed to establish that she would be persecuted in Belarus on account of her political opinion.

In conclusion, with respect to the applicant's exceptional hardship waiver application, it has not been established that the applicant's U.S. citizen spouse would face exceptional hardship were he to relocate to Belarus and alternatively, it has not been established that he would experience exceptional hardship were he to remain in the United States while the applicant relocated abroad for a two-year period. The record demonstrates that the applicant's spouse faces no greater hardship

than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse 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 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.