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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

713

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 01 2006

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 cursive script, 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 appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Uganda who 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). The applicant was admitted to the United States in J1 nonimmigrant exchange status on May 30, 2001. The applicant's spouse is a U.S. citizen.¹ The applicant seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to his spouse and based on political persecution upon return to Uganda.

The director determined that the applicant failed to establish exceptional hardship to a qualifying relative or that he would be persecuted based on his political opinion. *See Director's Decision*, dated January 25, 2006. The application was denied accordingly.

On appeal, counsel asserts that the applicant would be subject to persecution if he returned to Uganda. *Brief in Support of Appeal*, dated March 20, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's statement, documents related to the applicant's political activities and information on Uganda. The entire record was considered in rendering this decision.

Section 212(e) of the Act states in pertinent part that:

(e) 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 [now the Director, U.S. Department of State, Waiver Review Division (WRD), "Director"] 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

¹ The director's decision states that the applicant claims to have two U.S. citizen children, but he did not submit their birth certificates. *Director's Decision*, at 3. The AAO notes that the record does not include evidence, in the form of birth certificates, that the applicant has any U.S. citizen children.

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 first step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon relocation to Uganda for two years. The director found that this prong of the analysis was met.

The second step required to obtain a waiver is to demonstrate that a qualifying relative would suffer exceptional hardship upon remaining in the United States during the two-year period. The applicant states that his spouse is unemployed and needs his financial support to raise their sons. *Applicant's Statement*, at 1, undated. However, there is no evidence that she cannot obtain employment while the applicant is abroad or that she would face financial hardship if employed. The applicant states that his spouse would suffer emotionally and he assists her with chores, cooking and taking her to the hospital. *Id.* There is no substantiating evidence of emotional hardship in the record. The AAO also notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Based on the record, the AAO finds that exceptional hardship to a qualifying relative has not been demonstrated.

In regard to the applicant's political persecution claim, he states that Uganda is run by a corrupt government that persecutes, executes and incarcerates political opponents. *Applicant's Second Statement*, undated. The applicant states that several attempts were made on his life because he was an active member of the opposition group that challenged the Ugandan president in the 2001 presidential elections. *Id.* The applicant states that his brother-in-law ran against the president and they campaigned against the corruption and human rights abuses of the government. *Id.* The applicant states that he was arrested, incarcerated and tortured, and he fled from Uganda after buying his freedom in jail. *Id.* However, the record does not include substantiating evidence of several of the applicant's claims related to past persecution. The record includes evidence that the applicant was a youth mobilizer for the Forum for Democratic Change, that he was appointed as a

campaign agent, that opposition supporters have been arrested and placed in detention, and that human rights abuses occur in Uganda. Therefore, the record indicates that the applicant may face problems based on his political opinion if he returns to Uganda. However, the record does not reflect that he would be subject to persecution on account of his political opinion. The AAO notes that the legal standard “would be subject to persecution” is higher than the “well-founded fear” legal standard in asylum cases.

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 his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.