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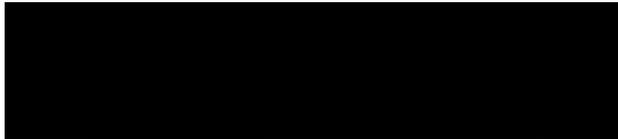
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2008**

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:



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 appeal will be dismissed.

The applicant is a native and citizen of Ukraine. The applicant entered the United States in January 1994 as a J-1 exchange visitor to participate in a program financed by the U.S. government. She is thus subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant seeks a waiver of the two-year foreign residence requirement based on exceptional hardship to her U.S. citizen spouse.¹ The applicant also seeks a waiver of the two-year foreign residence requirement based on persecution on account of religion, namely, her interfaith marriage to her Jewish husband.

The director found 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 Ukraine. The director additionally determined that the applicant had failed to establish she would be subject to persecution on account of religion if she returned to Ukraine. *Director's Decision*, dated February 25, 2008. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated April 24, 2008; copies of two previously issued decisions from the AAO; previously submitted affidavits from the applicant and her spouse; and an article about travel to Ukraine. 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

¹ On the Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612), the applicant indicated that she was filing a waiver under 212(e) of the Act based on exceptional hardship to a qualifying relative. The applicant did not indicate that she was also filing a waiver under 212(e) of the Act based on persecution on account of race, religion or political opinion. Nevertheless, as counsel for the applicant made numerous references to the persecution the applicant would encounter were she to return to Ukraine, and based on the fact that the Director, in her decision to deny the Form I-612, referenced that the Form I-612 has been filed on both hardship and persecution grounds, the AAO will review the instant appeal by analyzing both the persecution grounds relating to the applicant and the exceptional hardship grounds relating to the applicant's U.S. citizen spouse.

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*. (Quotations and citations omitted).

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 spouse if he relocated to Ukraine with the applicant for a two-year period. As the applicant's spouse states,

...I was born on December 23, 1956 in [REDACTED]. I am Jewish, a minority ethnic and religious group in [REDACTED]

I grew up in [REDACTED] and was raised following the traditions of my ethnic/religious groups. Members of my ethnic/religious group are easily identifiable in [REDACTED] by our slightly different appearance and by our Birth Certificates which clearly indicate our ethnicity.

As a Jew in [REDACTED] I have been harassed and discriminated against throughout my life. That's the reason why I fled [REDACTED] and asked for a refugee status in the U.S. I entered the United States, as a refugee, and became a naturalized citizen of the U.S. on September 28, 1999.

If my wife [the applicant] will be ordered to return to [REDACTED] to fulfill her foreign residency requirement, I will not be able to accompany her because I am fearful of returning to [REDACTED] I believe that I may be harmed, tortured, or killed because I am Jewish, a persecuted ethnic and religious minority in [REDACTED]..

The only group of people that [REDACTED] nationalists hate even more than they hate Jews, is those Jews who flee [REDACTED] for Israel or the U.S. and then come back to [REDACTED] Being a member of this group and being a citizen of the U.S., I do not have a chance for survival if I have to accompany my wife to [REDACTED]...

Affidavit of [REDACTED], dated November 6, 2006.

Counsel has provided extensive documentation to corroborate the applicant's spouse's statements with respect to anti-Semitism in ██████████ and the grant of refugee status to the applicant's U.S. citizen spouse in 1992 based on persecution suffered by him in ██████████. As such, based on the applicant's spouse's past experiences of being persecuted in Ukraine based on his religion, and the fact that he was granted refugee status in the United States due to said persecution, the AAO finds that exceptional hardship would be imposed on the applicant's U.S. citizen spouse if he were to return to ██████████ for a two-year period.

The second step required to obtain a waiver based on exceptional hardship is to establish that hardship would be imposed on the applicant's spouse if he remained in the United States during the two-year period. As stated by the applicant's spouse:

I...believe that my wife [the applicant] may be harmed, tortured or killed because she is married to an American Jew who 'betrayed' his country by fleeing to the U.S.

Id. at 1.

The AAO notes that no evidence has been provided to corroborate the applicant's spouse's statements that the applicant may be harmed were she to relocate to ██████████ based on the fact that she is married to an individual who left ██████████ over fifteen years ago based on religious persecution. Moreover, no evidence has been provided to confirm that an interfaith marriage to a Jewish husband could lead to harm for the applicant, thereby causing exceptional hardship to the applicant's U.S. citizen spouse. 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)).

Finally, although counsel references the emotional and psychological hardship the applicant's spouse is facing due to the fact that his spouse may have to relocate to ██████████ for a two-year period, no objective documentation from a licensed mental health professional has been provided to substantiate counsel's claims. In fact, the AAO notes that counsel stated, in her appeal brief, dated April 24, 2008, that a psychiatrist's report would be supplemented at a later date when it became available, but no report has been received by the AAO. 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). As such, it has not been established that the applicant's U.S. citizen spouse would suffer exceptional hardship were he to remain in the United States while the applicant relocates to Ukraine for a two-year period.

The AAO further finds that counsel has failed to establish that the applicant would be subject to persecution in Ukraine on account of her religion. 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 religion if she returned to counsel submitted an affidavit written by the applicant. As stated by the applicant:

I am fearful of returning to [REDACTED]..because I believe that I will be harmed, tortured or killed because of my mixed marriage to a Jew and because I ‘betrayed’ Ukraine by leaving it in 1994 and my staying in the U.S. for over ten years.

The Ukrainian nationalists equally despise Jews and those Ukrainians who marry Jews. As a wife of an American Jew, I will be harassed and persecuted and won’t be able to find a meaningful employment in Ukraine....

Affidavit of [REDACTED] dated November 6, 2006.

With respect to the fact that the applicant is married to an American Jew, it has not been established objectively that such a fact pattern would lead to persecution in [REDACTED] "[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). Moreover, no evidence has been provided to indicate that Ukrainians in general would be aware of the applicant and her marriage to an American who obtained refugee status due to religious persecution in Ukraine, let alone that the Ukrainian government would demonstrate hostility towards the applicant if it was. Finally, the U.S. Department of State makes no reference to incidents of persecution of Ukrainians based on their marriage to American Jews. As the U.S. Department of State states, in pertinent part:

The Constitution and the law on freedom of conscience provide for freedom of religion, and the Government generally respected this right in practice; however, there were isolated problems at the local level due to local officials taking sides in disputes between religious organizations.

There was no change in the status of respect for religious freedom during the period covered by this report. Government policy continued to contribute to the generally free practice of religion. Property restitution problems remained; however, the Government continued to facilitate the return of some communal properties.

There were instances of societal abuse and discrimination, including cases of anti-Semitism and anti-Islamism. The All-Ukraine Council of Churches and Religious Organizations, Council of Evangelical Protestant Churches, Conference of Representatives of Christian Churches of Ukraine, and Ukrainian Interchurch Council continued their work to resolve differences between various denominations and discuss relevant legislation.

The U.S. Government discusses religious freedom issues with the Government as part of its overall policy to promote human rights and raise concerns about anti-Semitism. U.S. embassy representatives also raised concerns about anti-Semitism with local officials and promoted ethnic and religious tolerance through public outreach events.

International Religious Freedom Report for Ukraine-2007, Released by the Bureau of Democracy, Human Rights and Labor, dated September 14, 2007.

As referenced above, the U.S. Department of State recognizes that the Constitution and the laws in Ukraine provide for freedom of religion. While the United States Department of State notes that there have been instances of societal abuse and discrimination, including acts of anti-Semitism, the record does not establish that the applicant is Jewish and thus, that she would be subject to such abuse and/or discrimination. In fact, the record does not establish what, if any religion, the applicant practices. The record only states that the applicant is in an interfaith marriage.

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 applicant's spouse's past persecution due to being Jewish does not equate to persecution for the applicant based on her marriage to an American Jew. Moreover, counsel has failed to establish by corroborating documentation that the applicant would be persecuted in the future based on her interfaith marriage. Finally, the applicant has failed to establish what, if any religion, she practices and that such practice could lead to being persecuted in Ukraine. As such, the AAO finds that the applicant has failed to establish that she would be persecuted in Ukraine on account of religion.

In conclusion, with respect to the applicant's exceptional hardship waiver application, although it has been established that the applicant's U.S. citizen spouse would face exceptional hardship were he to relocate to Ukraine, 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. As for the applicant's persecution claim, the applicant has failed to establish that she would be persecuted on account of religion.

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.