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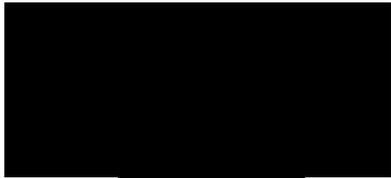
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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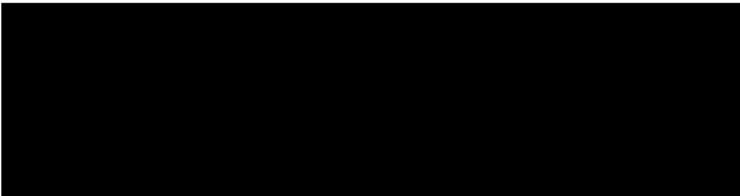


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 13 2010**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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.

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 visitor status in August 2005. The applicant 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. As noted on the Form I-612, Application for Waiver of the Foreign Residence Requirement, executed by both the applicant and counsel in February 2009, the applicant presently seeks a waiver of her two-year foreign residence requirement, based on the claim that she will be persecuted on account of religion if she returns to Russia.

The director concluded that the applicant failed to establish that she would be persecuted on account of religion were she to return to Russia for a two-year period. *Director's Decision*, dated October 23, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a letter, dated November 11, 2009. In addition, on February 16, 2010 and March 1, 2010, the AAO received supplemental documentation in support of the appeal. 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 at 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.

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. In this case, the applicant contends that she qualifies for a waiver based on persecution on account of religion.

To support the assertion that the applicant would be persecuted on account of her religion if she returned to Russia, the applicant states the following:

Being Jewish my family and I were persecuted in Russia for our religious beliefs in the past...we will be targeted and persecuted again.

Skinheads and Nazism are rampant in Russia these days. In October 1991, a bold man with a swastika tattoo threatened me with a bottle of flammable liquid and a knife, brought me to an entrance of an apartment building using force and tried to force me to have sex with him, saying that dirty young Jews should please the desires of the best nation.... I thought that he would kill me but thankfully an elderly couple entered the building and was forced to flee. In a few days another man met me at the same place and said he should finish the task his friend had failed to do....

[T]hat man did rape me and my mother was on the verge of heart attack when she learned what had happened to me....

I worked in a Jewish religious pre-school as an English teacher in 2002-2004.... But threats and offences were following me. A lot of families escaped to Israel, as well as my sister and her daughter did. After several direct threats from people who knew what kind of pre-school I was working in, my case was broken into and robbed and when I came, I saw "Jews should not drive cars" on side windows and a note "Jewish kids don't need English" on the seat....

I am a practicing Jew, who regularly attends synagogue, participate actively in Jewish youth affairs, was a member of the Jewish organization in Kazan synagogue and taught at a Jewish pre-school. If I left for Russia I will fear for my life...because I will continue being openly a practicing Jew and may be targeted, as other practical Jews are targeted on a daily basis in Russia because of their religion. My husband and I were married by a Rabbi in accordance with our faith. Our faith is very important to us....

In May 2005 a group of Anti-Semites vandalized tombstones of graves in the Jewish cemetery in the city where I lived, Kazan, and they left a message "We started with the dead and will finish with the living." The only Jewish school in Kazan was set on fire the day before the school year started. Swastikas and anti-Semitic messages were found on the walls. The same year a number of Duma members and members of a popular party "Rodina" demanded that Judaism and Jewish organizations be banned from Russia. The situation has exacerbated rapidly since I left Russia in August of 2005. Anti-Semitism is now rampant in Russia....

Letter from [REDACTED] undated.

With respect to the fact that the applicant is a practicing Jew, it has not been established that such practice would lead to persecution in Russia. "[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). While the AAO sympathizes with the applicant with respect to the traumatic events experienced by her, it has not been established, as further discussed below, that the Russian government is doing nothing to stop anti-Semitic acts, to support the assertion that she would be persecuted were she to return to Russia.

To begin, 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 "The law recognizes Russian Orthodoxy, Islam, Judaism, and

Buddhism as 'traditional'.... Government policy continued to contribute to the generally free practice of religion for most of the population.... The trend toward a decrease in violent attacks against Jews, reported in recent years, continued. According to the MBHR, the number of anti-Semitic attacks against Jews decreased during the year by 7 percent...." *2009 Human Rights Report-Russia, U.S. Department of State*, dated March 11, 2010.

Finally, the U.S. Department of State, in its International Religious Freedom Report for Russia, states, in pertinent part:

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

Conditions remained largely the same for most religious groups, and government policy continued to contribute to the generally free practice of religion for most of the population.

There are an estimated 250,000 Jews, the majority of whom live in Moscow and St. Petersburg.

According to a statement by a representative of the Ministry of Justice in May 2009, 23,078 religious organizations were registered as of January 1, 2009, 1,115 more than January 2008. In June 2008 these groups broke down as follows: Russian Orthodox (12,586), Muslim (3,815), Protestant (several denominations totaling 3,410), Jehovah's Witnesses (402), Jewish (286), Orthodox Old Believers (283), Roman Catholic (240), Buddhist (200), and other denominations.

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....

Federal authorities, and in many cases regional and local authorities, facilitated the establishment of new Jewish institutions. While construction of the Museum of Tolerance, devoted to the history of the country's Jews and the Holocaust, was scheduled to be completed by the end of 2011, the global economic crisis delayed the timeline. Construction was expected to begin in the second half of 2009.

International Religious Freedom Report for Russia-2009, U.S. Department of State, dated October 26, 2009.

As referenced above, the U.S. Department of State recognizes that the Constitution and the laws in Russia provide for freedom of religion, confirms that there are over a quarter of a million Jews in Russia, and specifically states that federal, state and local authorities facilitated the establishment of

new Jewish institutions. 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 personal experiences, in 1991 and during her teaching period in 2002-2004, although traumatic and disconcerting, do not amount to persecution and the record does not indicate that the applicant would be persecuted in the future based on her religion. As such, the AAO finds that the applicant has failed to establish that she would be persecuted in Russia 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 this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.