

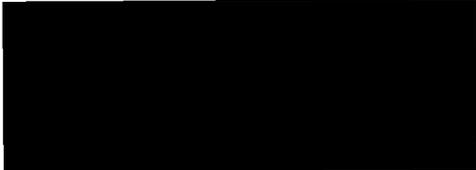
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 18 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 Burma who obtained J-1 nonimmigrant exchange visitor status in 2001. 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 the Exchange Visitor Skills List. 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 political opinion if she returns to Burma.

The director concluded that the applicant failed to establish that she would be persecuted on account of political opinion were she to return to Burma for a two-year period. *Director's Decision*, dated December 24, 2009. The application was denied accordingly.

In support of the appeal, counsel for the applicant submits a letter, dated April 15, 2010, 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 (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 political opinion.

To support the assertion that the applicant would be persecuted on account of her political opinion if she returned to Burma, the applicant submitted a statement with her I-612 filing, and a duplicate of said statement on appeal. The applicant states the following:

My active opposition to the military government began at the end of 1987. At that time, I was a student at the University of Rangoon, Institute of Economics. Because of the economic policies of the military dictator...the economy was run into the ground.... [P]eople became paupers overnight. As a result, students began demonstrating against the government....

On August 10, 1988, I was arrested at a sit-down demonstration in downtown Rangoon with about 50 other students and a few Buddhist monks. We were taken directly to Insein Prison.... I was interrogated by an official who eventually ordered the guard to leave the interrogation room. I was molested by this official who punched my face for screaming and attempting to fight him off. I lost three of my teeth, my mouth was

bleeding and my clothes were ripped. He left me in the room threatening to kill me and my family if I said anything about this encounter, and that he could find me anytime....

After four days, I was called for and released. My father managed to contact different officials and negotiate my release. My interrogator taunted and threatened me right before my release.... I later discovered that this official who had attempted to rape me had raped other students in detention and was notorious for his brutality. Even after my release he continued to terrorize me by visiting my house and threatening me.....

In August of 1998, there was a commemoration ceremony of the people that were killed by the military during the 1988 nationwide uprising. Because it was a commemoration event, I attended the ceremony. However, shortly afterwards, I was arrested at home, I was taken to the local township police station and held there for three days. During my detention, I was interrogated and threatened.... Upon my release, I was ordered to sign an acknowledgement of my crime and that I would no longer participate in any type of activity involving any subversive political movements.

After my release we began having serious problems with the local township police and military intelligence.... Because they knew of my fear of arrest at any time, they would come to my house and harass us, threaten us, extort money, and demand food and drink.....

I was able to obtain a J-1 visa to study at Williams College in Williamstown, MA in June 2001. Even after I arrived in the U.S., my parents were still facing harassment, threats, and extortion from the Burmese military authorities....

If I return to Burma, I will face continued persecution. The Burmese military government does not tolerate any opposition, and once any type of opposition has been revealed, a secure existence can not be achieved. Moreover, the Burmese military government has become more suspicious of citizens of Burma who return from the United States and who have a history of supporting the Burmese pro-democracy movement. Consequently, I fear that if I return to Burma, the military regime will arrest, detain, torture, interrogate, imprison me and possibly even kill me for my beliefs and activities in democracy.....

Statement in Support of Persecution Waiver, dated April 25, 2008.

In support of the applicant's past persecution, a letter and translation has been provided by the applicant's mother, who states that the applicant's father has been interrogated. As the applicant's mother details, "Every time they take your father away for interrogation, your young sister cannot

eat or drink anything until they bring him back. Sometimes, they keep him for two/three days as they believe he is an active opponent and sends news about Burma to you. They keep threatening him with imprisonment....” *Letter and Translation from Mother*, undated. In addition, counsel has provided three photographs, asserting that said photographs depict the applicant at pro-democracy demonstrations in New York.

To begin, the letter provided by the applicant’s mother is undated. Moreover, the applicant’s mother, in her letter, states that the applicant’s father is being interrogated because they believe he is an active opponent. As such, it has not been established that the interrogations specifically relate to the applicant and her past or present political opinion and/or involvement. As for the photographs provided, they too are undated and do not establish that the applicant specifically plays a significant role in the pro-democracy movement while residing in the United States and that said involvement will cause her to be persecuted were she to return to Burma.

Moreover, as noted by the director, counsel has failed to provide any documentation which outlines the applicant’s specific political involvement—past and/or present—with the National League for Democracy (NLD). In addition, no documentation has been provided establishing the applicant’s past persecution in Burma. The record establishes that despite the applicant’s assertion that she was persecuted in Burma for her political opinion, she was able to complete her university studies, obtain gainful employment as an accountant for numerous companies, and was able to depart Burma without incident to study in the United States on a J-1 Visa. *Supra* at 2. Nothing in the record specifically confirms her past persecution in Burma, her current involvement in the pro-democracy movement, and/or that upon her return to Burma, she will be persecuted.

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. The director also noted that an asylum officer had deemed the applicant’s testimony with respect to her asylum application to not be credible in material respects. For that reason, rather than granting the applicant’s request for asylum, as the asylum officer has authority to do, the case was referred to an immigration judge for further review and consideration. *Supra* at 4. On appeal, the issues raised by the director, based on an independent analysis of the evidence provided by the applicant, apart from the asylum decision, have not been addressed by counsel or the applicant. As such, the AAO concurs with the director that the applicant has failed to establish that she would be persecuted in Burma on account of her political opinion.

Assuming the applicant’s relation of her personal experiences in August 1988 and August 1998 is accurate, although traumatic and disconcerting, these experiences do not establish that the applicant would be persecuted based on political opinion were she to return to Burma to comply with the two-year foreign residence requirement. As such, the AAO finds that the applicant has failed to establish that she would be persecuted in Burma on account of political opinion. The AAO also notes that even if she were to establish a well-founded fear of persecution and eligibility for asylum, she would not necessarily establish the more stringent standard of “would be persecuted” required for a waiver under section 212(e) of the Act.

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.