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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 and Immigration Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **SEP 28 2010**

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:

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

ACTED FOR AND
APPROVED FOR SIGNING
Initials: JT Date: 6/22/11
FCO/Unit COW

DISCUSSION: The waiver application was denied by the Director, California Service Center and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen. The motion will be dismissed.

The applicant is a native and citizen of Nigeria who was admitted to the United States in J-1 nonimmigrant exchange status in August 2005. He 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 his two-year foreign residence requirement based on persecution on account of political opinion.

The director determined that the applicant had failed to establish that he would be subject to persecution on account of political opinion were he to return to Nigeria to comply with the two-year foreign residence requirement. *Director's Decision*, dated February 9, 2010. The application was denied accordingly.

On appeal, the AAO concurred with the director that the applicant had failed to establish that he would be persecuted in Nigeria on account of his political opinion, as required by section 212(e) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated June 23, 2010.

In support of the instant motion, counsel for the applicant submits an affidavit from the applicant, dated July 16, 2010, and copies of photographs previously submitted by the applicant. 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.

The AAO, in its decision to dismiss the applicant's appeal, stated as follows:

[C]ounsel has failed to provide any documentation which outlines the applicant's specific political involvement—past and/or present—with the All Nigeria Peoples Party (ANPP) or from the referenced advocacy group, 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 Nigerians in general would be aware of the applicant and his past political involvement, let alone that the Nigerian government would demonstrate hostility towards the applicant if it was.

The AAO notes that despite the incidents referenced by the applicant due to his political involvement with the opposing party, he was never imprisoned. Nor does the record indicate any difficulties the applicant experienced when he traveled outside the country, to the United Kingdom and the United States, to further support the assertion that he was persecuted or that he would be persecuted were he to return to Nigeria due to political opinion. Finally, counsel has not provided any documentation establishing the applicant's involvement with the opposition party's movement while residing in the United States, to further support the claim that he will be persecuted based on political opinion were he to return to Nigeria....

The U.S. Department of State does not reference any incidents against members of the ANPP, one of two main opposition parties in Nigeria, in its most recent Human Rights Report. In addition, the AAO notes that in Nigeria's last election, in 2007, the PDP won 70 percent of seats in the national legislature and 75 percent of state governorships. Such a percentage establishes that the PDP is not the only political party in Nigeria, and further establishes that political opponents are able to express their opinions and win seats in the national legislature and state governorships without suffering persecution. Finally, the U.S. Department of States notes that "The constitution and law provide for the right to associate freely with other persons in political parties, trade unions, or special interest organizations, and the government generally respected this right in practice. The constitution and law allow the free formation of political parties. There were 51 parties registered with the Independent National Electoral Commission (INEC) at year's end. *Country Reports on Human Rights Practices-Nigeria*, U.S. Department of State, dated March 11, 2010.

Id. at 5-6.

On motion, the applicant asserts the following:

I maintain that I fear persecution were I to return to Nigeria due to my political opinion. Although I was not imprisoned, I was physically attacked and injured, as a result, I will be scared for the rest of my life....

So many members of ANPP were subjected to torture, imprisoned and killed in 2003.... Although the U.S. Department of State is one of agencies that report on human rights violation in various countries around the world, it is also possible that they only report those crimes, deaths, torture and persecutions that are brought to their attention....

Currently in Nigeria, the Nigerian Police Force and State Security Service continue to torture and kill innocent citizens as a result of any opposition to the current reigning government....

I was actively involved with ANPP and my Advocacy Group in 2003 and 2004.... It is not feasible for me to continue to be actively involved since entering the US in 2005.

However, I maintain contact with some members of ANPP, and they have told me that the political situation in Nigeria is increasingly volatile. ...

Affidavit of [REDACTED] dated July 16, 2010.

Based on a thorough review of the instant motion, the AAO concludes that the reservations raised by the AAO when the appeal was reviewed and adjudicated in June 2010 remain unresolved, as they have not been adequately addressed with the instant motion. As previously referenced in the AAO decision, dated June 23, 2010, no documentation has been provided to establish the applicant's specific political involvement with the All Nigeria Peoples Party (ANPP) or from the referenced advocacy group, and counsel has also failed to document that based on this membership and/or involvement, the applicant was and/or will be persecuted. Although the photographs provided are disturbing, counsel has failed to establish that said injuries relate specifically to the applicant's relationship with ANPP. 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)). The AAO further notes that as of today, the U.S. Department of State has not updated its report on human rights practices in Nigeria to reflect human rights violations against members of the ANPP.

Moreover, no evidence has been provided to indicate that Nigerians in general would be aware of the applicant and his past political involvement, let alone that the Nigerian government would demonstrate hostility towards the applicant if it was, in light of the fact that by the applicant's own admission, he is no longer actively involved with ANPP or the referenced advocacy group since entering the United States in 2005, more than five years ago. As such, it has not been established that the applicant would be persecuted on account of political opinion were he to return to Nigeria to comply with the two-year foreign residence requirement.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the applicant has not provided any new facts to be considered. 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 *motion*, the applicant has not met his burden. Accordingly, the motion will be *dismissed*.

ORDER: The motion is dismissed.