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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H3

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

FEB 28 2011

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

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 \$630. 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. Counsel for the applicant filed an appeal with the USCIS-Vermont Service Center and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly filed.

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, California Service Center, 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.

On appeal, counsel for the applicant submitted the following to the USCIS-Vermont Service Center: the Form I-290B, Notice of Appeal (Form I-290B), dated November 3, 2009; and a letter from counsel, dated November 3, 2009.¹

Pursuant to a Memorandum of Understanding, all Form I-612 applications are to be adjudicated by the USCIS California Service Center. *Memorandum of Understanding-I-612 Hardship/Persecution Waiver Transfer to California Service Center*, dated December 6, 2006. USCIS-Vermont Service Center has no jurisdiction over Form I-612 applications. Moreover, an affected party filing an appeal shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Further, the Director's Decision states that the applicant may appeal the Director's decision using the enclosed Notice of Appeal and must submit such an appeal to THIS OFFICE [California Service Center].

Contrary to the instructions provided by the Director and the regulation at 8 C.F.R. § 103.3(a)(2)(i), counsel for the applicant submitted the appeal to the USCIS-Vermont Service Center. Accordingly, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes that on November 11, 2009, counsel filed a second Form I-290B, Notice of Appeal, to the USCIS-California Service Center, appealing the above-referenced I-612 denial. The AAO issued a decision, dismissing the appeal, on April 13, 2010.