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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**



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Date: **MAY 16 2011**

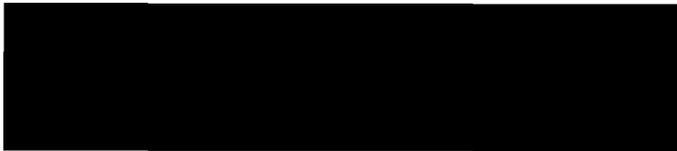
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: 

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:



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,

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Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Russia who was admitted to the United States in J-1 nonimmigrant exchange status in February 2002. She 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 her foreign residence requirement based on persecution on account of political opinion.

The director determined that the applicant had failed to establish that she would be subject to persecution on account of political opinion were she to return to Russia to comply with the foreign residence requirement. *Director's Decision*, dated January 28, 2010. The application was denied accordingly.

On appeal, the AAO concurred with the director that the applicant had failed to establish that she would be persecuted on account of political opinion were she to return to Russia, as required by section 212(e) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated August 17, 2010.

On the combined motion to reopen and reconsider, the AAO found that no new facts has been provided. Nor had the applicant established that the decision was based on an incorrect application of law or Service policy. Consequently, the combined motion was dismissed. *Decision of the AAO*, dated December 2, 2010.

On December 30, 2010, counsel for the applicant filed the Form I-290B, Notice of Appeal or Motion to the Administrative Appeals Office (Form I-290B). On the Form I-290B, in Part 2, counsel for the applicant indicated that they were filing a motion to reconsider. A brief in support of the motion was submitted by counsel.

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 to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel for the applicant asserts the following:

Contrary to the assertions in the AAO decision, [redacted] [the applicant] has an affirmative political opinion which was known to the members of the Mafia who persecuted her on account of her political opinion.... The AAO dismisses the applicant's argument that she was subjected to persecution based on political opinion, stated that "[I]f the Russian Mafia were persecuting individuals on account of their political opinion, in this case, the applicant's democratic ideals and her belief in an individual's right to legal representation...it would stand to reason that the applicant would have been negatively pursued when she became a lawyer and started representing individuals.... This assertion is incorrect.... She was not in view of the Mafia until she dared to oppose them by representing a client that was their legal adversary....

Brief in Support of Motion to Reconsider, dated December 30, 2010.

As previously noted by the AAO, a nexus must exist between the Mafia's motive to harm the applicant and a protected ground, in this case, as counsel contends, the applicant's political opinion. Such nexus has not been established. The applicant has failed to establish that her political opinion was "at least one central reason for the harm she suffered." See INA §208(b)(1)(B)(i). Although counsel asserts that the applicant had an affirmative political opinion which was known to the members of the Mafia who persecuted her on account of her political opinion, the record contains no evidence from counsel establishing that the Russian Mafia sought to harm the applicant on account of any real or imputed political opinion. 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).

The applicant herself does not assert that she was persecuted because the Mafia opposed her democratic ideals. The applicant contends that the mafia sought to take the business over since it was very profitable. *Supplemental Affidavit of [redacted]* dated July 20, 2009. The record establishes that the applicant was the head of her own private law firm in Valdivostock. She explains that she was a successful lawyer and won many of her cases. *Affidavit of [redacted]* dated July 20, 2009. It was not until she started representing the [redacted] that she began encountering problems with the Mafia. The events in question appear to relate to the applicant's representation of a coal mining company and the issue of its ownership after the death of its owner. It has not been established that the actions of the Russian mafia were on account of the applicant's imputed political opinion, specifically, her belief in democracy. [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). The matters at hand appear to be private matters with respect to the ownership of a mine that do not relate to the applicant's political opinion or involvement.

Based on the evidence on the record, the harm inflicted on the applicant is a criminal act and the applicant has not established that it constitutes persecution on account of a political opinion. Therefore, the applicant has failed to establish that the AAO's decision was based on an incorrect application of law or Service policy. The appeal will therefore be dismissed in accordance with 8 C.F.R. §103.5(a)(4).

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.

ORDER: The motion is dismissed.