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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



Date: **FEB 16 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE:

APPLICATION: Application for Waiver 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,

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 record reflects that the applicant is a native and citizen of Iraq who obtained J1 nonimmigrant exchange status in May 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 the two-year foreign residence requirement based on persecution on account of imputed political opinion and religion.

The director found that the applicant had failed to establish he would be subject to persecution if he returned to Iraq. *Director's Decision*, dated October 4, 2011. The application was denied accordingly.

In support of the appeal, counsel for the applicant provides a brief, dated November 27, 2011. 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(I): 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 he qualifies for a waiver based on imputed political opinion and religion.

To support the assertion that the applicant would be persecuted on account of his imputed political opinion and/or religion if he returned to Iraq, counsel submits an affidavit written by the applicant. As stated by the applicant,

I fear that I will be persecuted on account of my political opinion, i.e., a Pro-Western and United States Government collaborator, and my religion, a Sunni Muslim. Specifically, I fear that I will be targeted and persecuted because of my perceived direct affiliation with and identification as a collaborator of the United States foreign policy and involvement in Iraq. As a highly educated Sunni academic pharmacist, I would be a prize kill for Al-Qaeda and Shia militia groups....

As an academic pharmacist, I was in a position of need, but also of danger....

There was a nearly complete breakdown of the pharmaceutical system in Iraq, with a lack of critical medicine and an excess of counterfeited drugs. Pharmacists and their academic staff were extremely important in maintaining a semblance of a health care system, which made them key targets for attacks, kidnappings, and murders by terrorist groups who aimed to undermine the stability in Iraq....

In June 2005, Al-Qaeda issued death threat against me, delivered by letter to my family home in Iraq. Al-Qaeda posted the death threat letter on the gate of my family's home. The death threat letter was specifically named me, and no one else.

The death threat letter accused me of being a 'servant to the crusaders,' and stated that 'killing a renegade [supporter of the United States] first is better to us than killing a true infidel, in God's name, your repentance would have been more dear to us than turning your back on your religion.'

The death threat noted that it was the second and final warning against me. I never received the first death threat letter....

While there have been noticeable important in some areas of Iraq, there continues to be regular reports on Al-Qaeda killings in Iraq.... Even with a successful United States mission, the risk to many Iraqis who are deemed to be infidels, or collaborators of the United States, remain as targets by Al-Qaeda.

As stated in the death threat, Al-Qaeda considers me a renegade, a supporter of the United States government....

Sunni Muslims have been historically divided from Shia Muslims.... Al-Qaeda and other Shia Militias target the Sunni people.

Affidavit of [REDACTED] dated May 19, 2011.

To begin, the AAO notes that the director erred when she noted that although Al Qaeda is a full-fledged terrorist organization, said organization is not the present government in power in Iraq nor has it ever been the government in power in Iraq and thus, persecution cannot be established. *Supra* at 3. As correctly noted by counsel, persecution can be at the hands of the government in power or by persons or organizations which the government is unable or unwilling to control. In this case,

although Al-Qaeda is a terrorist organization, it is one that the government has encountered difficulties in controlling. As noted by the U.S. Department of State,

Extremist violence, coupled with weak government performance in upholding the rule of law, resulted in widespread and severe human rights abuses. Terrorist groups, such as al-Qaida in Iraq (AQI), and other extremist elements continued to launch highly destructive attacks, attempting to influence the elections and government formation process, fuel sectarian tensions, and undermine the government's ability to maintain law and order. Extremist and AQI attacks continued against ISF and government officials. AQI and other extremists also conducted high-profile bombings targeting urban areas, Shia markets, and mosques, and Shia religious pilgrims. Religious minorities, sometimes labeled "anti-Islamic," were often targeted in the violence....

Terrorists also targeted government institutions and leaders. Terrorists subjected the International Zone, where many government institutions and foreign embassies are located, to rocket and mortar attacks throughout the year. On February 18, a suicide car bomber killed 13 individuals outside the main government complex in Ramadi. Suicide attackers targeted the same Ramadi government complex in Anbar province twice, on December 12 and 27, killing at least 13 in the first attack and at least 17 in the second attack. On April 4, suicide attackers detonated car bombs near embassies in Baghdad, resulting in 42 fatalities. On October 19, ██████████ ██████████ to Iraq, ██████████ escaped unharmed when a roadside bomb struck his convoy; one ISF member died from the attack.

2010 Country Reports on Human Rights Practices-Iraq, U.S. Department of State, dated April 8, 2011.

With respect to the applicant's assertion that he will be persecuted on account of religion, it has not been established that being Sunni would lead to persecution in Iraq. "[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). Moreover, no evidence has been provided to indicate that Iraqis in general, and Al Qaeda specifically, would be aware of the applicant's return and his Sunni beliefs, let alone that Al Qaeda would demonstrate hostility towards the applicant if it was.¹ The AAO notes that Sunnis comprise over 30% of the Iraqi population

¹ The AAO notes that Al Qaeda is committed to the interpretations of Sunni Islam. As noted below:

Al Qaeda and many of its affiliates state a commitment to ending non-Muslim "interference" in the affairs of Muslims and to recasting predominantly Muslim societies according to narrow interpretations of Sunni Islam and related Islamic law....

and form the majority in the west, center and north of the country. *See International Religious Freedom Report-Iraq, U.S. Department of State, Released by the Bureau of Democracy, Human Rights and Labor* dated November 17, 2010.

Moreover, with respect to the applicant's claim that he would be persecuted based on imputed political opinion, the AAO notes that no evidence has been provided to establish that Iraqi nationals who have been residing in the United States and/or have pro-Western views are being persecuted at this time. Nor has any documentation been provided that academic pharmacists in Iraq are being persecuted for their professional standing and a perceived pro-Western political opinion. While an article has been provided by counsel referencing pharmaceutical chaos in Iraq, the article is from 2005 and does not establish that attacks against academic pharmacists are a direct result of their political opinion. As such, it has not been established that an Iraqi national who has lived in the United States for a number of years, has pro-Western views and/or is a highly educated academic pharmacist would be persecuted based on political opinion.

Section 212(e) of the Act requires that the applicant establish that he would be subject to persecution upon return to his country of nationality or last residence. The statute requires that the applicant establish he would be persecuted, a very high standard. The applicant's receipt of a threatening letter in 2005, purportedly from Al Qaeda, after his departure from Iraq and more than six years ago does not amount to persecution and the record does not indicate that the applicant would be persecuted in the future based on his religion or imputed political opinion. The applicant's fears, while perhaps well-founded, do not establish that he would be subject to persecution. As such, the AAO finds that the applicant has failed to establish that he would be persecuted in Iraq on account of religion and/or on account of imputed political opinion.

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. Accordingly, the appeal will be dismissed.

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