

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**



(b)(6)

Date: **APR 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-612, Application for Waiver of the Foreign Residence Requirement (Form I-612) 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 Yemen who obtained J-1 nonimmigrant exchange status in August 2010. 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 U.S. government financing. In section 5 of the Form I-612, the applicant indicated that he was seeking a waiver of his two-year foreign residence requirement based on "Abandonment by Family-Per Court Order." See *Form I-612*, dated October 2, 2012.

The director noted that the applicant was seeking a waiver based on persecution on account of race, religion, or political opinion. The director concluded that the applicant's claim of persecution had not been specifically detailed and thus, it has not been established that he would be subject to persecution were he to return to Yemen for a two-year period. *Director's Decision*, dated November 14, 2012. The Form I-612 was denied accordingly.

On appeal, counsel first notes that the applicant did not file the Form I-612 based on persecution. As counsel notes, the applicant's previous attorney intentionally left blank section 5 of the Form I-612 because neither of the options for applying for a waiver--- extreme hardship or persecution---applied to the applicant. Counsel further states that because section 5 is inapplicable to the applicant but a box was required to be checked for the application to be accepted, box b was checked and a handwritten note was included that the waiver of the foreign residence requirement was sought on the grounds of abandonment by family and persecution was not then, nor is now, the grounds for the applicant's application for a waiver. Evidence in support of the applicant's abandonment by his parents and the applicant's court-ordered placement with [REDACTED] and [REDACTED] has been submitted. See *Brief in Support of Appeal*, dated January 10, 2013.

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.

As noted by the director and corroborated by the U.S. Department of State in writing, the applicant's options to fulfill the requirements as set forth under section 212(e) of the Act are to: 1) return to his home country for a two-year period; or 2) obtain a waiver of the two-year foreign residence requirement based on exceptional hardship upon the applicant's spouse or child; or 3) obtain a waiver based on persecution on account of race, religion or political opinion; or 4) obtain a waiver based on a no objection waiver. The applicant has failed to establish that he returned to his home country for two years. Nor has the applicant established that he is eligible for a waiver based on exceptional hardship as he is unmarried and has no children. As counsel notes, the applicant is not requesting a waiver based on persecution. Finally, no documentation has been provided establishing

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that the applicant has obtained a no objection waiver. As such, the USCIS is prohibited from approving the Form I-612 based on his request for a waiver due to a claim of abandonment.¹

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 his burden. Accordingly, the appeal will be dismissed.

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

¹ The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner. "If a rule creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself, then it is substantive." *La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.