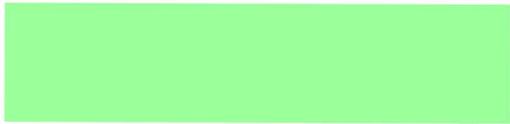


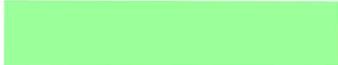
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

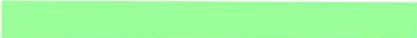


**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **APR 02 2014** Office: CALIFORNIA SERVICE CENTER 

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
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 matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State (DOS), Waiver Review Division (WRD).

The applicant is a citizen of Belarus who was admitted to the United States in J-1 nonimmigrant exchange status in August 2011. 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 U.S. government financing. The applicant seeks a waiver of her two-year foreign residence requirement based on the claim that her U.S. citizen spouse would suffer exceptional hardship if he moved to Belarus temporarily with the applicant and in the alternative, if he remained in the United States while the applicant fulfilled her two-year foreign residence requirement in Belarus.

The director determined that the applicant failed to establish that her U.S. citizen spouse would experience exceptional hardship if the applicant fulfilled her two-year foreign residence requirement in Belarus. *Director's Decision*, dated October 11, 2013. The application was denied accordingly.

On appeal, the applicant asserts that her U.S. citizen husband will experience exceptional hardship were she to return to Belarus for a two-year period. In addition, the applicant states that she has a well-founded fear of persecution on account of her political opinion if she were to return to Belarus. In support, the applicant has submitted the following: a letter; information from the Embassy of the United States in Minsk, Belarus; copies of two undated and unexplained photographs; medical and government documents; and a letter in support. 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(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.

In *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated that, "Therefore, it must first be determined whether or not such hardship would occur as the consequence of her accompanying him abroad, which would be the normal course of action to avoid separation. The mere election by the spouse to remain in the United States, absent such determination, is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed. Further, even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e), supra."

In *Keh Tong Chen v. Attorney General of the United States*, 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination that it is detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted).

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would experience exceptional hardship if he relocated to Belarus for two years with the applicant. In a letter, the applicant's spouse contends that he does not speak the languages spoken in Belarus and he would thus not be able to obtain gainful employment or function on a day to day basis. He claims that he would be rendered helpless in Belarus and would be at the mercy of others, thereby causing him shame, depression, loneliness and isolation. Further, the applicant's spouse details that he is accustomed to free speech and can speak openly about his government without fear of persecution but were he to relocate to Belarus, he would be at risk of being singled out as an outsider. Moreover, the applicant's spouse contends that he would suffer hardship due to long-term separation from his family and friends. Finally, the applicant's spouse references the problematic country conditions in Belarus, including censorship, substandard health care, and high levels of radiation because of the accident at Chernobyl. *See Letter from [REDACTED]* The record establishes that the applicant's spouse was born and raised in the United States. He has no ties to Belarus. Further, documentation has been provided establishing the problematic country conditions in Belarus. As noted by the U.S. Department of State, economic and political reform has stalled, the government's human rights record has deteriorated, tourist facilities are not highly developed, medical care is neither modern nor easily accessible, and a reduction in staff at the embassy as a result of Belarusian government restrictions may limit the services U.S. citizens may need while in Belarus. *Country Specific Information-Belarus, U.S. Department of State*, dated July 24, 2013. It has thus been established that the applicant's spouse would suffer exceptional hardship were he to reside in Belarus for two years with the applicant.

The second step required to obtain a waiver based on hardship is to establish that the applicant's U.S. citizen spouse would suffer exceptional hardship if he remained in the United States during the two-year period that the applicant resides in Belarus. With respect to this criterion, the applicant's spouse asserts that were his wife to return to Belarus for a two-year period, he fears she would be imprisoned as a result of her political opinion. Further, the applicant's spouse contends that he would not be able to communicate with her regularly. Moreover, the applicant's spouse references

his strong bond with his wife and the positive impact she has had in his daily life. [REDACTED] dated May 5, 2012.

In support, a letter has been provided from the applicant detailing her political activities prior to her departure from Belarus and incidents she contends that she encountered, including arrests, interrogations, threats and bodily harm, at the hands of the Belarusian government as a result of her support of the opposition. *See Letter from [REDACTED]* The applicant further provides a letter in support from a fellow student who confirms the applicant's involvement with the opposition and the resulting arrests and injuries sustained in the hands of the police. Medical documentation establishing a head injury and right ovarian apoplexy to the applicant, both requiring hospitalization, has been provided. Finally, the U.S. Department of State confirms that Belarus is an authoritarian state with significant human rights problems, including citizens' inability to change the government, serious and frequent abuses by the government and imprisonment on politically motivated charges. *Country Reports on Human Rights Practice 2012-Belarus, U.S. Department of State*. Based on the fears and anxieties referenced by the applicant's spouse were his wife to return to Belarus, the applicant has established that her spouse would experience exceptional hardship were he to remain in the United States while the applicant relocates abroad for a two-year period.

On appeal, the applicant for the first time states that she would be persecuted were she to return to Belarus.¹ 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.

To support the assertion that the applicant would suffer persecution on account of political opinion if she returned to Belarus, the applicant has provided a statement on appeal outlining the hardships she encountered in Belarus on account of her support of the opposition party. She states that as a result of her political opinion, she was arrested, interrogated and threatened with imprisonment and suffered bodily harm at the hands of the Belarusian government. *See Letter from [REDACTED]* A letter from one of the applicant's fellow students has been provided stating that the applicant was arrested and exposed to persecution in Belarus based on her support of the opposition. *See Letter from [REDACTED]* dated November 11, 2013.

¹ On the Form I-612, the applicant stated that the reason she was applying for a waiver was on the ground that her departure from the United States would "impose exceptional hardship on my U.S. citizen or lawful permanent resident spouse or child..." *See Form I-612*, dated May 20, 2013. It was not until the application was denied and the applicant filed the instant appeal that she stated that she would be persecuted on account of political opinion were she to return to Belarus.

The record fails to outline the applicant's specific political involvement—past or present—with the opposition, and the applicant has also failed to document that based on this membership or involvement, she will be persecuted. Although two photographs have been submitted on appeal, the applicant has not provided any information about when the photographs were taken, what the photographs establish or their relevance to her request for a waiver. Nor does the statement provided by the applicant's fellow student establish the applicant's specific day to day involvement and role with the opposition. While the AAO acknowledges the applicant's statement regarding the incidents she experienced in Belarus, the events referenced by the applicant occurred between 2009 and 2011, more than two years ago. The AAO further notes that despite the applicant's fears, at no time did she indicate that she experienced any restrictions with respect to coming to the United States to participate in the J-1 program in 2011, despite her assertions that she would be detained were she to return to Belarus. Finally, no evidence has been provided to indicate that the government or anyone in Belarus would be aware of the applicant and her past political involvement, or that the Belarusian government would demonstrate hostility towards the applicant if she returned. Section 212(e) of the Act requires that the applicant establish that she would be subject to persecution upon return to her country of nationality or last residence. The applicant has failed to establish that she would be persecuted in Belarus on account of her political opinion.

The AAO thus concludes that the applicant has established that her U.S. citizen spouse would experience exceptional hardship were he to relocate to Belarus and in the alternative, were he to remain in the United States without the applicant, for the requisite two-year term. The evidence in the record establishes the hardship the applicant's spouse would suffer if the applicant temporarily departed the U.S. would go significantly beyond that normally suffered upon the temporary separation of families. As for the applicant's persecution claim presented for the first time on appeal, the applicant has failed to establish that she would be persecuted on account of political opinion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. The AAO notes, however, that a waiver under section 212(e) of the Act may not be approved without the favorable recommendation of the DOS. Accordingly, this matter will be remanded to the director so that he may request a DOS recommendation under 22 C.F.R. § 514. If the DOS recommends that the application be approved, the secretary may waive the two-year foreign residence requirement if admission of the applicant to the United States is found to be in the public interest. However, if the DOS recommends that the application not be approved, the application will be re-denied with no appeal.

ORDER: The matter will be remanded to the Director to request a section 212(e) waiver recommendation from the Director, U.S. Department of State, Waiver Review Division.