



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

(b)(6)

[Redacted]

Date: **AUG 18 2014**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement of 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting 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 applicant is a native and citizen of Nigeria who obtained J-1 nonimmigrant exchange visitor visas twice, and was admitted to the United States in J-1 status on July 7, 2008, and August 16, 2010. The applicant was subsequently admitted to the United States in B-1/B-2 nonimmigrant status on July 21, 2011. 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. The applicant presently seeks a waiver of his two-year foreign residence requirement based on the claim that he will be persecuted on account of his prior employment as a broadcast engineer and his Christian religion if he returns to Nigeria.

The director concluded that the applicant failed to establish that he would be persecuted on account of religion were he to return to Nigeria for a two-year period. *Director's Decision*, dated January 7, 2014. The application was denied accordingly.

In support of the appeal, the applicant submits: a brief; documentation of his non-immigrant visas and admissions into the United States; copies of educational credentials; evidence of membership in professional organizations; documentation of birth and marriage; a statement of no objection from the Embassy of Nigeria; documentation of his employment in Nigeria; articles on [REDACTED] activities; the applicant's two affidavits for stolen items in Lagos, Nigeria; another affidavit attesting the applicant was attacked on May 11, 2011; and a letter attesting to the applicant's Christian faith. In the brief, counsel contends the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to return to Nigeria. In addition, counsel asserts the applicant's employment as a broadcast engineer has caused him to be harmed and threatened in Nigeria, and if he were to return to that country he would face persecution at the hands of the [REDACTED] group.

The record contains, but is not limited to: the documents listed above; documentation of birth and divorce; additional articles on [REDACTED]; U.S. Department of State ("DOS") travel warnings; the applicant's statements; photographs; training certificates; financial documents; and other applications and petitions. 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.

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 persecution on account of religion and past employment.

To support an assertion that the applicant would be persecuted by the group [REDACTED] the applicant asserts in his December 10, 2013, statement of reason, that he has a bachelor's degree in electrical engineering, and he was previously employed with the [REDACTED] ([REDACTED] as a broadcast engineer. Letters confirming appointment at the [REDACTED] and the applicant's 2011 resignation are present in the record.

The applicant claims he fulfilled the two-year home residency requirement after his first J-1 entry on July 7, 2008, and that he returned to the United States on another J-1 non-immigrant visa on August 16, 2010. The applicant states he returned to Nigeria after three weeks in the United States, and that he was subsequently admitted to the United States in B-1/B-2 non-immigrant status on July 21, 2011. Copies of the applicant's non-immigrant visas and I-94 forms are present in the record. He asserts after he was last admitted to the United States on July 21, 2011, he realized his life would be at risk if he returned to Nigeria because the terrorist group [REDACTED] increased their attacks on Christians and journalists.

The applicant contends his background as a senior broadcast engineer with the [REDACTED] where he managed and administered video servers as well as archival systems, puts him at risk. He explains that [REDACTED] believed news reporters were spying on their activities, and have reacted by attacking and killing journalists and cameramen. Articles on [REDACTED] activities are submitted in support. The applicant claims that he is well known to have managed media content of news reporters for about six years, and that he is thought to possess personal files of video clips. He indicates this has been a major threat to his life and he had to quit his job. An [REDACTED] Deputy Director states in a letter to the applicant that the applicant's August 29, 2011, letter of resignation was accepted.

The applicant adds that returning to Nigeria will impose an emotional and psychological hardship on his spouse, who fears traveling with him because of adverse country conditions. U.S. Department of State travel warnings are submitted in support.

On appeal, the applicant submits three affidavits, sworn at the High Court in [REDACTED] Lagos State, Nigeria. In two of the affidavits, dated December 16, 2010, and April 8, 2011, the applicant attests that his laptop and hard drive were stolen from his office on December 13, 2010, and that his wallet, which contained bank and identification cards, was lost in transit on March 29, 2011. In the third affidavit, dated February 18, 2014, the applicant claims that on May 11, 2011, he was attacked by three unknown men on Victoria Island, one of whom was armed with a gun. He states that they demanded tapes and storage media devices relating to [REDACTED]. The applicant adds that he denied having any, and that the men tried to drag him into a bus. He claims he resisted and escaped, but that because one of the men chanted a religious slogan, he knew they perceived him as anti-Islam.

The applicant has not provided sufficient evidence to establish that he would be persecuted in Nigeria based on his Christianity. Much of the applicant's claim of persecution relates to his prior employment as broadcast engineer in Nigeria. However, persecution based on one's employment or occupation is not a ground of persecution for a waiver of the two year foreign residence requirement. *See section 212(e) of the Act.* To the extent that the applicant claims his employment made him more visible as a Christian to people involved in [REDACTED] he has not provided consistent

evidence to establish this. The applicant submitted articles indicating that [REDACTED] members have attacked journalists and Christians in Northern Nigeria. The applicant has not indicated or provided evidence demonstrating he would be in danger in Lagos, Nigeria, where he was born and where, according to his 2013 Biographic Information form, he resided since birth. The DOS confirms in a travel warning that [REDACTED] is most active in the north or northeastern Nigeria, and does not indicate Christians in the southern state of Lagos are targeted:

The Department continues to recommend against all but essential travel to the following states due to the risk of kidnappings, robberies, and other armed attacks: Adamawa, Bauchi, Borno, Gombe, Kano, and Yobe States. The Department also advises travelers to exercise additional caution while traveling in Abia, Akwa Ibom, Bayelsa, Delta, Edo, Imo, Jigawa, Kaduna, Katsina, Kebbi, Niger, Plateau, Rivers, Sokoto, and Zamfara States...

[REDACTED] an extremist group based in northeast Nigeria and designated as a Foreign Terrorist Organization by the Department of State, has claimed responsibility for many attacks, mainly in northern Nigeria...

Nigeria Travel Warning, U.S. Department of State, updated May 6, 2014.

Furthermore, although the applicant claims in a February 18, 2014, affidavit that he was attacked in May 2011 due to his possession of recordings related to [REDACTED], the applicant did not mention this attack in his December 10, 2013, response to the director's Request for Evidence, or in the waiver statement submitted to the DOS.¹ The applicant provides no explanation for why he did not present information on this May 2011 attack earlier in the waiver process. As such, the applicant's statement, without corroborating evidence, can be accorded little weight.

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. We find the applicant has not shown he was persecuted in the past, and the record does not indicate that the applicant would be persecuted in the future based on his religion. As such, the AAO finds that the applicant has not met his burden of proof in establishing he would be persecuted in Nigeria on account of religion.

The director found the applicant demonstrated that [REDACTED] would target his U.S. citizen spouse as a result of their anti-American sentiment. Counsel claims on appeal that this creates extreme hardship for the applicant's spouse, as they would be separated, and she would worry about the applicant's safety given the adverse country conditions.

The applicant must demonstrate his spouse would experience exceptional hardship both if the spouse relocated to Nigeria for the duration of the two year foreign residency requirement and if the applicant returned without her. *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965). In *Matter of*

¹ The applicant also does not mention the stolen property incidents described in his 2010 and 2011 affidavits, nor is there any indication that these events were related to [REDACTED] targeting him. Without such indications or supporting evidence, these affidavits do not assist the applicant in demonstrating he would be persecuted based on his Christian faith in Nigeria.

Mansour, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals stated, “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 suffer exceptional hardship if she remained in the United States during the two-year period that the applicant resides in Nigeria. Evidence of record, however, is insufficient to support assertions that the spouse’s concern over the applicant’s safety in Nigeria amounts to exceptional hardship. As discussed above, the applicant has not submitted sufficient evidence to establish he would be persecuted on account of his religion upon returning to Nigeria. Furthermore, as also indicated above, there is no evidence to corroborate the applicant’s assertions, made for the first time on appeal, that he was targeted for violence in the past in May 2011 or otherwise. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The DOS indicates in its May 6, 2014, Nigeria travel warning that travel to Nigeria, especially to the Northeastern states, entails risks to personal safety and health. Consequently, the applicant’s travel may cause his spouse emotional difficulties due to concerns about the effects of adverse country conditions. However, there is insufficient evidence of record to demonstrate that this emotional hardship rises to the level of exceptional hardship in the event of separation from the applicant for a two year period.

The second step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse would experience exceptional hardship if she resided in Nigeria for two years with the applicant. The director found the applicant’s U.S. citizen spouse would be targeted for violence by

[REDACTED] as a result of their anti-American sentiment. The DOS's May 6, 2014, travel warning corroborates this, indicating in addition to [REDACTED] related threats in the Northeastern states, U.S. citizens have been targeted for kidnapping, violence, and other crimes throughout Nigeria. As such, we find the applicant has demonstrated his spouse would experience exceptional hardship if she were to relocate to Nigeria with the applicant for the two year foreign residency requirement. However, because the applicant has not shown that his spouse would experience exceptional hardship in the event of separation for two years, we cannot find that the applicant has met the requirements for a waiver due to exceptional hardship under section 212(e) of the Act.

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 this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.