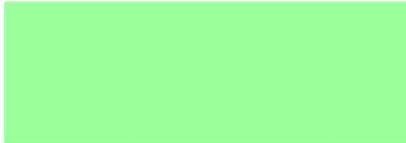
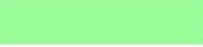


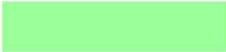


**U.S. Citizenship
and Immigration
Services**

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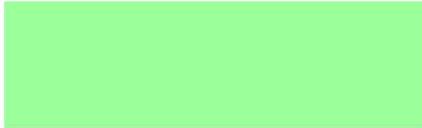


Date: **JUL 30 2014** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Applicant: 

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 native and citizen of China who was admitted to the United States in J-1 nonimmigrant exchange visitor status on June 17, 1998. 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 the exchange visitor status list. The applicant presently seeks a waiver of her two-year foreign residence requirement as she claims she will be persecuted on account of her religion if she returns to China.

The director concluded the applicant failed to establish that she would be persecuted on account of her association with [REDACTED] were she to return to China for a two-year period. *Director's Decision*, dated April 2, 2014. The application was accordingly denied.

In support of the appeal, the applicant submits a brief. Therein, counsel for the applicant contends the director erred by not taking into account the fact that an immigration judge granted the applicant withholding of removal in 2005, based on her claim that she would be persecuted because of her beliefs related to [REDACTED] if she returned to China. Counsel adds that the director did not appropriately analyze other updated evidence of the applicant's persecution in China, including an expert letter and a letter from the applicant's former employer.

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.

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 she qualifies for a waiver based on persecution on account of religion.

In the September 15, 2003, supplemental statement submitted to support her Application for Asylum and for Withholding of Removal (Form I-589), the applicant claims after she was admitted to the United States in June 1998, she became a practitioner of [REDACTED]. The applicant describes communications she had with her mother, who informed her that her father participated in a July 21, 1999, demonstration in Shenzhen. Her mother indicated that her father joined with the assistant organizer of the [REDACTED] to protest against government mistreatment of [REDACTED] practitioners, and that he was consequently arrested, detained, fined, and injured by the Chinese government. Photos of the applicant's father were submitted. The applicant explains that on July 22, 1999, the Chinese government banned [REDACTED] as an evil cult, and because of subsequent persecution, her mother told her she should never return to China. The applicant's

mother also told her that the Chinese government registered both her and the applicant's father as [REDACTED] practitioners, and in addition to the father's arrest and detention, the Chinese government forced them to attend a month-long brainwashing course.

The applicant's asylum application, dated October 16, 1999, was referred to the immigration judge. The record reflects that the application for asylum was denied, but the immigration judge granted the applicant withholding of removal on February 28, 2005.

In a July 22, 2013, declaration, the applicant states that she remains a devout [REDACTED] practitioner, and if she returned to China, she would still be persecuted on account of her beliefs. She contends her parents, sister, and other relatives are afraid to talk about [REDACTED], and that they have made it clear if the applicant returns to China, she will have problems. The applicant explains that the Chinese government is aware she is a [REDACTED] practitioner. The applicant's former employer, the [REDACTED] indicates in a July 25, 1999, letter, that all employees, including herself, who are involved with [REDACTED] must go to the government correction center for a series education program. The former employer further indicates that the Chinese government notified the employer that the applicant is involved with the overseas [REDACTED] organization. The employer concludes the letter by terminating the applicant's employment and suspending her retirement pension, which accumulated over the past 7 years.

The applicant additionally explains that the government's awareness, that she is or was involved in [REDACTED] related activities, places her in danger in the event she returns to China. Articles on persecution of [REDACTED] practitioners in China were submitted with the waiver application. The applicant also submitted an affidavit from a professor of Chinese history who had researched, written, and published articles and books about [REDACTED]. In this expert report, the professor states that China does monitor dissent abroad, that Chinese embassies and consulates have been tasked with the surveillance of [REDACTED] activities, and that the Chinese government's persecution of [REDACTED] has generally remained consistent from 2002 to the present. *Expert affidavit*, February 25, 2014. The expert concludes that the applicant's fear of arrest is consistent with known practices in China, and that the persecution she would face includes arrests, detention, torture, placement in labor camps and psychiatric hospitals, and death. *Id.*

We find that the applicant has demonstrated she would be persecuted based on her religion were she to return to China. The applicant was granted withholding of removal on February 28, 2005, and she has submitted sufficient evidence to establish that she would presently be subject to persecution based on her [REDACTED] related beliefs.

Although the director noted in the decision that the applicant was granted withholding of removal, the director did not, either in the decision or the December 12, 2013, Request for Evidence, discuss this grant in further detail. In order for withholding of removal to be granted, an applicant must demonstrate that his or her "life or freedom would be threatened... because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." *Section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3)*. In contrast, for a waiver under section 212(e) of the Act, the cognizable types of persecution upon which an alien can claim eligibility are limited to the alien's race, religion, or political opinion.

In this case, the applicant established, as shown by the immigration judge's February 28, 2005, order, that she was eligible for withholding of removal because would be persecuted based on her religion, which is a type of persecution also covered in section 212(e) of the Act. Although the record does not contain a transcript of the removal proceedings or a written order specifically elucidating the reasons for granting withholding, the record contains sufficient documentation, including but not limited to the applicant's Form I-589 Application for Asylum and other documents she submitted to the immigration judge, to demonstrate that she claimed she would be persecuted based on her [REDACTED]-related activities and beliefs.

The applicant's claims of persecution are supported by consistent evidence indicating that the Chinese government is aware that the applicant practices [REDACTED] that her family members have been subject to persecution in China, and that she would similarly be persecuted if she returned to China. Her assertions are consistent with the U.S. Department of State's 2012 Human Rights Report on China, which indicates:

There were widespread reports of activists and petitioners being committed to mental-health facilities and involuntarily subjected to psychiatric treatment for political reasons. According to [REDACTED] (a state-owned newspaper covering legal affairs), the Ministry of Public Security directly administered 24 high-security psychiatric hospitals for the criminally insane (also known as anfang facilities). From 1998 to May 2010, more than 40,000 persons were committed to anfang hospitals. In 2010 an official of the Ministry of Public Security stated that detention in anfang facilities was not appropriate for patients who did not demonstrate criminal behavior. Nonetheless, political activists, underground religious adherents, persons who repeatedly petitioned the government, members of the banned Chinese Democracy Party (CDP), and [REDACTED] practitioners were among those housed in these institutions...

Human rights lawyers reported that authorities did not permit them to defend certain clients or threatened them with punishment if they chose to do so. The government suspended or revoked the licenses of lawyers or their firms to stop them from taking sensitive cases, such as defending prodemocracy dissidents, house-church activists, [REDACTED] practitioners, or government critics...

Family members of activists, dissidents, [REDACTED] practitioners, journalists, unregistered religious figures, and former political prisoners were targeted for arbitrary arrest, detention, and harassment...

U.S. Department of State Country Reports on Human Rights Practices for 2013: China, *found at* <http://www.state.gov/j/dr> [REDACTED]

Section 212(e) of the Act requires that the applicant establish that she would be persecuted upon return to her country of nationality or last residence, a very high standard. Based on the extensive documentation in the record, we find that the applicant has established that she would be persecuted in China on account of religion.

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 she may request a DOS recommendation under 22 C.F.R. § 514.

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.