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

(b)(6)

U.S. Citizenship and Immigration Services

Date: NOV 2 5 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:

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 native and citizen of China who was admitted to the United States in J-1 nonimmigrant exchange visitor status on October 11, 2012. 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 that the applicant failed to establish that she would be persecuted on account of her association with were she to return to China for a two-year period. *Director's Decision*, dated June 24, 2014. The application was accordingly denied.

In support of the appeal, the applicant submits a statement and additional documentation in support of her claim that she will be persecuted on account of religion was she to return to China. 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 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 a November 2, 2013 declaration, the applicant explains that she began practicing [redacted] in China in 1996. She maintains that starting in July 1999, she was arrested five times and was detained and tortured in a labor camp for almost two years due to her religious beliefs. Further, she asserts that her home was searched two times and she lost multiple tenure positions at universities because her employers learned that she was a [redacted] practitioner. The applicant alleges that many of her friends who were also practitioners of [redacted] were persecuted to death by the authorities. The applicant elaborates that as a result of her inability to obtain gainful employment due to her religious beliefs, she had to have any evidence of her time in a labor camp for being a [redacted] practitioner removed from her employment file. She maintains that due to said evidence being removed from her employment file, she was finally able to get a job but the position was much less desirable than the four previous positions she had lost due to her religious beliefs.

The applicant also alleges that she was very careful not to reveal her beliefs in an attempt to avoid further persecution and the loss of gainful employment. She explains that she hid her status as a practitioner in China by never telling anyone that she was a practitioner; visiting websites with special software to avoid internet tracking; closing doors, windows and curtains to avoid detection when practicing at home; only talking about with others from the point of view of a third party; and only using public phones to contact other practitioners.

The applicant additionally explains that the government's awareness, that she is and was involved in related activities, places her in danger in the event she returns to China. She concludes by asserting that were she to return to China, the Chinese authorities would know of her status as a practitioner and her active participation in the United States in exposing the persecution of practitioners in China and she would likely be arrested, detained, tortured, or even persecuted to death.

Articles on persecution of practitioners in China were submitted with the waiver application. Furthermore, the record contains extensive evidence of the applicant's active participation in marches, rallies, protests, demonstrations, and conferences, and her numerous speeches while in the United States, all in support of and in resistance to the persecution of members in China. The applicant has also submitted evidence establishing her arrests and detention in China. Moreover, the applicant has submitted extensive evidence of practitioners, both in China and in the United States, who have been persecuted in China as a result of their religious beliefs.

The applicant's assertions of persecution as a result of her religion are consistent with the U.S. Department of State's 2013 Human Rights Report on China, which indicates in pertinent part:

> Certain religious or spiritual groups are banned by law. The criminal law defines banned groups as "evil cults" and those belonging to them can be sentenced to prison. A 1999 judicial explanation states this term refers to: "those illegal groups that have been found using religions, *qigong* [a traditional Chinese exercise discipline], or other things as a camouflage, deifying their leading members, recruiting and controlling their members, and deceiving people by molding and spreading superstitious ideas, and endangering society." There are no public criteria for determining, or procedures for challenging, such a designation. The government maintains a ban on the
>
> The CCP maintains a Leading Small Group for Preventing and Dealing with the Problem of Heretical Cults and its implementing "610" offices (named for the date of its creation on June 10, 1999) to eliminate the movement and to address "evil cults."
>
> The government did not renew the professional licenses of a number of attorneys who advocated on behalf of religious freedom and it imprisoned other religious freedom activists or otherwise impeded their work on behalf of religious clients.

> Authorities also harassed or detained the family members, including children, of religious leaders and religious freedom activists.

U.S. Department of State Country Reports on Human Rights Practices for 2013: China, *found at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220186.

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. We note, 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.