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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**

Date: **MAY 21 2013**

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:

SELF-REPRESENTED

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, appearing to read "Ron Rosenberg".

f.r.

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 Armenia who obtained J-1 nonimmigrant exchange visitor status in August 2003. 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 religion if he returns to Armenia.

The director concluded that the applicant failed to establish that he would be persecuted on account of religion were he to return to Armenia for a two-year period. *Director's Decision*, dated December 7, 2012. The application was denied accordingly.

In support of the appeal, the applicant submits a statement and additional documentation in support of his claim that he will be persecuted on account of religion were he to return to Armenia. 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(I): 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.

To support the assertion that the applicant would be persecuted on account of his religion if he returned to Armenia, the applicant states the following:

Return to my Homeland...is extremely dangerous, since I am more than sure that persecutions and possibly death await me there, because of my religious preferences and associations that have drastically changed during my stay in the United States. After receiving my Ph.D. in the summer of 2009 and joining [REDACTED]..I deeply embraced the essence and the philosophy of the Jesuit order....

My own problems have started in the fall of 2009, when my mother, who lives in Yerevan, Armenia, happened to meet one of my best college friends.... As she had imprudently shared her happiness with him regarding my academic success, namely my new faculty position at [REDACTED] and my interest in Jesuitism, my friend had cut the

conversation short and left. The news about my affiliation with the Society of Jesus had immediately spread among my friends and neighbors. At first, my close friends' frequent phone calls to me stopped. Instead, my mother began to receive anonymous phone calls, threatening her to burn our house down and kill me if I ever dared to appear in Armenia.... Even our relatives stopped calling and visiting my mother....

My mother didn't tell me about the fears and hardships she was suffering until mid December of 2009, when I told her over the phone that I was intending to spend my January 2010 holidays in Armenia. As I asked her when would be the best time to buy the flight tickets, she urged me not to do that. To my question 'why,' she had nothing else to do, but to tell me the whole truth. I was shocked.... That whole night I suffered from nightmares and in the morning I woke up with extremely high blood pressure. From then on, my health substantially deteriorated....

On January 6, 2010...another close friend of mind...called me...and blurted out 'There were times when I used to call you this day to say Merry Christmas. What am I supposed to do now, you traitor?.... How could you sell your soul to devil? What made you do so? That damned country? Now listen to me, you Judas, forget that you have friends here. Enemies are what you gained by your treachery....'

Personal Statement of Gennadi Gevorgyan, dated July 28, 2012.

The applicant goes on to state that he was harassed, by phone and e-mail by friends and family members regarding his religion, his mother got into a conflict with the neighbor regarding a land dispute that required police intervention and his mother's home was vandalized with a threatening inscription on the door stating that Jesuits had no place in Armenia and betrayers would not be forgiven. As a result, the applicant contends that he is experiencing medical hardship, specifically high blood pressure, due to distress and anxiety relating to the threats made against him, directly and through his mother, by Armenian nationals.

With respect to the fact that the applicant is a Jesuit, it has not been established that such practice would lead to persecution in Armenia. "[P]ersecution does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional." *Fatin v. INS*, 12 F.3d 1233, 1240 (3rd Cir. 1993). Further, the U.S. Department of State makes no reference to incidents of persecution of Jesuits in Armenia based on their religious beliefs. As the U.S. Department of State states, in pertinent part:

Approximately 90 percent of citizens belong to the Armenian Apostolic Church, one of six Oriental Orthodox churches. The Armenian Apostolic Church's spiritual center is the Etchmiadzin cathedral and monastery located near the capital of Yerevan.

There are small communities of other religious groups, each constituting less than 5 percent of the population: Roman Catholic, Armenian Uniate (Mekhitarist) Catholic, Orthodox Christian, Armenian Evangelical Christian, Molokan, Pentecostal, Seventh-day Adventist, Baptist, various groups of charismatic Christians, Jehovah's Witnesses, The Church of Jesus Christ of Latter-day Saints (Mormons), Yezidis (non-Muslim Kurds who practice Yezidism), Jews, Sunni Muslim Kurds, Shiite Muslims, pagans, and others.

The constitution protects religious freedom....

There were reports of societal abuses based on religious affiliation, belief, or practice. The general population expressed negative attitudes about minority religious groups. These attitudes often did not affect personal and neighborly relationships but did reflect a general perception of minority religious groups as threats to the state, a sentiment reinforced by media outlets. Members of minority religious groups experienced societal discrimination and intolerance, including in the workplace....

International Religious Freedom Report 2011-Armenia, Released by the Bureau of Democracy, Human Rights, and Labor.

As referenced above, the U.S. Department of State recognizes that the Constitution in Armenia provides for freedom of religion and does not reference any incidents of persecution against Jesuits. While the AAO recognizes that individuals in Armenia may fear societal discrimination, intolerance and/or harassment due to their membership in a minority religion, it has not been established that the applicant would be persecuted on account of his religion. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). 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. The applicant's past experiences do not amount to persecution 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 failed to establish that he would be persecuted in Armenia on account of religion.

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. The waiver application is denied.