



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 20583331

Date: FEB. 25, 2022

Appeal of California Service Center Decision

Form I-612, Application to Waive Foreign Residency Requirement

The Applicant, a native and citizen of the Philippines, seeks a waiver of the two-year foreign residence requirement for certain J nonimmigrant visa holders pursuant to section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The Director of the California Service Center denied the Form I-612, Application to Waive Foreign Residency Requirement (waiver application), concluding that the record did not establish, as required, that the Applicant would be subject to persecution on account of his religion if he returned to his home country in compliance with the two-year foreign residence requirement. On appeal, the Applicant submits additional evidence and asserts that the Director erred in this determination.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand this matter for further proceedings consistent with this decision.

I. LAW

No foreign national admitted under section 101(a)(15)(J) of the Act who is subject to a two-year foreign residency requirement is eligible to apply for an immigrant visa, permanent residence, or an H or L nonimmigrant visa until it is established that the foreign national has resided and been physically present in the country of his or her nationality or last residence for an aggregate of at least two years following departure from the United States. Section 212(e) of the Act.

The statute provides for waiver of this requirement, however, in the public interest upon the favorable recommendation of U.S. Citizenship and Immigration Services (USCIS), after USCIS has determined that departure from the United States would impose exceptional hardship upon the foreign national's U.S. citizen or lawful permanent resident spouse or child, or that the foreign national cannot return to the country of his or her nationality or last residence because he or she would be subject to persecution on account of race, religion, or political opinion. *Id.*

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, 222 (BIA 1985). Applicants for a waiver under section 212(e) of the Act must meet a higher standard of proof than applicants for refugee or asylee status, who may establish their eligibility by showing either past persecution or a reasonable possibility of future persecution. *See, e.g.*, 8 C.F.R. § 208.13(a)-(b). But here, the Applicant must establish that he "will" or "would" be subject to persecution. 8 C.F.R. § 212.7(c)(5), (8).

II. ANALYSIS

The record establishes that the Applicant is subject to the two-year foreign residence requirement under section 212(e) of the Act, which may be waived upon him establishing that he cannot return to the country of his nationality *or* last residence because he would be subject to persecution on account of his race, religion, or political opinion. Although the record reflects that the Applicant was residing in [REDACTED] with legal permanent resident status when he first entered the United States with J-1 nonimmigrant status in August 2016, he is seeking a waiver of the two-year foreign residence requirement based on his claim that he will be persecuted on account of his religion were he to return to the Philippines.

The Director incorrectly stated that the Applicant is a "national and citizen of [REDACTED]". The Director then briefly referenced the evidence in the record and found that the Applicant did not establish he would be persecuted upon "return to [his] country." However, section 212(e) of the Act permits claims of religious persecution upon return to the country of one's nationality *or* last residence. In this case, the Applicant made a claim of religious persecution upon return to the country of his nationality, the Philippines, and the Director did not address this claim. Therefore, we will remand the waiver application for the Director to determine whether the Applicant cannot return to the Philippines because he would be subject to persecution on account of religion and, if not, any outstanding eligibility requirements.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of new decision consistent with the foregoing analysis.