



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



H3

FILE: [Redacted]

Office: Nebraska Service Center

Date: AUG 19 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act, 8 U.S.C. 1182(e)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant is a native of Russia and citizen of Tajikistan who is subject to the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e), because she participated in an exchange program which was financed by a government agency. The applicant was admitted to the United States as a nonimmigrant exchange visitor on August 14, 1998. The applicant completed her studies in June 2000 and married a native of Iran and United States citizen on August 5, 2000. The applicant seeks the above waiver after alleging that her departure from the United States would impose exceptional hardship on her U.S. citizen spouse.

The director determined that the record failed to establish that the applicant's departure from the United States would impose exceptional hardship upon her spouse and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, the applicant states that careful reading of the previous and new supporting documents, such as the No Objection Letter from the Government of Tajikistan, testimonies by experts of mental health and traumatic stress and the expert opinions of her spouse's job supervisor and academic adviser clearly demonstrate that the applicant's departure will put the well-being of the U.S. citizen in jeopardy.

A "no objection" letter from the foreign country of the applicant's nationality or last foreign residence must be submitted to the Waiver Review Division (WRD), U.S. State Department Visa Office for a recommendation in another proceeding. Such a letter has no bearing on the present matter before the Associate Commissioner.

A letter is submitted by Patricia Healy, M.Ed., Psychology Intern and Brian Riedesel, Ph.D., Diplomate, American Academy of Experts in Traumatic Stress, who aver that there will be serious adverse effects to her husband's mental health if he remains in the United States while the applicant returns to Tajikistan temporarily for two years. It is asserted that the applicant's husband would feel morally compelled to accompany her abroad due to the terrorist attacks of September 11th, as conditions in Tajikistan have become more dangerous.

Section 212(e) of the Act provides that:

No person admitted under section 101(a)(15)(J) of the Act or acquiring such status after admission-

- (i) whose participation in a 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 residence,...

shall be eligible to apply for an immigrant visa or for permanent residence, or for a nonimmigrant visa under sections 101(a)(15)(H) or 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or 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 of the Commissioner of Immigration and Naturalization 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),...the Attorney General 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 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,...And provided further, That,...the Attorney General 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.

Matter of Mansour, 11 I&N Dec. 306 (D.D. 1965), held that 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 does not represent exceptional hardship as contemplated by section 212(e) of the Act. See Matter of Bridges, 11 I&N Dec. 506 (D.D. 1965).

Adjudication of a given application for a waiver of the foreign residence requirement is divided into two segments. Consideration must be given to the effects of the requirement if the qualifying spouse and/or child were to accompany the applicant abroad for the stipulated two-year term. Consideration must separately be given to the effects of the requirement should the party or parties choose to remain in the United States while the applicant is abroad.

An applicant must establish that exceptional hardship would be imposed on a citizen or lawful permanent resident spouse or child by the foreign residence requirement in both circumstances and not merely in one or the other. Hardship to the applicant is not a consideration in this matter.

In a discussion of the term "exceptional hardship," consideration must be given to the report in H.R. Rep. No. 721, 87th Cong., 1st Sess. 121 (1961), entitled *Immigration Aspects of the International Educational Exchange Program*. Subcommittee number one of the Committee on the Judiciary reiterated and stressed the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement and stated it is believed 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 this country would cause personal hardship. The court noted additionally that the significance traditionally accorded the family in American life warrants that where the applicant alleges that denial of a waiver will result in separation from both a citizen-spouse and a citizen-child, a finding of "no exceptional hardship" should not be affirmed unless the reasons for this finding are made clear. The court's insistence upon clear articulation of reasons in cases involving a citizen-spouse and a citizen-child is consistent also with Congressional policy.

The record reflects that the applicant married her husband knowing full-well that she was required to return to the country of her nationality following completion of the program. The Forms IAP-66 in the record reflect that she read and understood the Two-Year Home-Country Physical Presence Requirement and signed her name to that effect on July 16, 1998, on December 15, 1999, and again on July 20, 2000. All of these dates preceded her marriage on August 5, 2000.

The record is devoid of corroborative information relating to the applicant's family and their daily lives in Tajikistan from which the Service could pursue through American Consular inquiry.

The record still fails to contain persuasive documentation which would reflect that the applicant's husband would suffer any type of hardship other than emotional, if he chose to remain in the United States. Such hardship is the usual hardship which might be anticipated during a temporary separation between family members caused by military, business, educational, or other obligations. While certainly inconvenient, such hardship does not rise to the level of "exceptional" as contemplated by Congress.

In this proceeding, it is the applicant alone who bears the full burden of proving his or her eligibility. Section 291 of the Act, 8 U.S.C. 1361. In this case, the burden of proof has not been met, and the order dismissing the appeal will be affirmed.

ORDER: The motion is dismissed. The order of August 31, 2001, dismissing the appeal is affirmed.