



U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



H3

FILE:

Office: Honolulu

Date: AUG 23 2002

IN RE: Applicant:

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:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 District Director, Honolulu, Hawaii, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines 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). The applicant was admitted to the United States as a nonimmigrant exchange visitor on August 26, 2000. The applicant seeks the above waiver of this ground of inadmissibility.

The district director determined that the applicant was ineligible for the waiver as he is not able to establish that exceptional hardship would be imposed on a qualifying relative or that he would be subject to persecution upon his return to the Philippines. The district director then denied the application accordingly.

On appeal, counsel refers to a letter from the Exchange Visitors Program Committee endorsing the applicant's "no objection" letter and a letter of recommendation from Major Michael E. Brainerd which will be transmitted to the Philippine Embassy which will, in turn, forward that documentation to the U.S. Department of State through diplomatic channels. Counsel asserts that all that was needed was the letter from Major Brainerd and that was sent.

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. It was held in Matter of Musharraf, 17 I&N Dec. 462 (BIA 1980), that a "no objection" letter from the embassy of the alien's country of nationality or last residence does not constitute a "waiver" within the meaning of section 212(e) of the Act.

WRD regulations specify the procedures for filing a waiver based on a "no objection" statement. First, the statement must be transmitted to the WRD through official channels. The INS is not involved in the "no objection" waiver process, and the "no objection" statement is submitted directly to the WRD. The statement must come from the country's foreign office to the U.S. mission in that country or through the country's Chief of Mission or designee in the United States to the WRD in the form of a diplomatic note. 22 C.F.R. 514.44(d)(1).

Second, the exchange visitor must, upon request, submit the appropriate information to the WRD. 22 C.F.R. 514.44(d)(2). It should be noted that furnishing a "no objection" statement by the exchange visitor's government merely begins the consideration of the exchange visitor's request, and does not guarantee its approval. The waiver does not become effective until there is a favorable recommendation by the WRD, followed by INS approval. Matter of Musharraf, supra.

Although the record refers to a "no objection" letter from the foreign country of the applicant's nationality or last foreign residence, such statement must be submitted to the WRD for a recommendation in another proceeding. A favorable recommendation from the WRD based on that "no objection" letter is not contained in the present record.

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 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 [Waiver Review Board of the United States Department of State], 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 at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request 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...: And provided further, That, except in the case of an alien described in clause (iii), 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.

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.

The applicant has no qualifying relatives, and the record fails to contain a favorable recommendation by the WRD based on the applicant's "no objection" letter. The applicant has not met that burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.