U.S. Department of Justice

Immigration and Naturalization Service

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[redacted]

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

FILE: [redacted] Office: Vermont Service Center Date: JAN 14 2003

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: [redacted]

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

> 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....

The record contains four Form IAP-66 Certificates of Eligibility for Exchange Visitor (J-1) Status. Part II of the form requires the adjudicating officer to make a determination as to whether the applicant is subject to the two year residence requirement. The first IAP-66, dated June 19, 1984, indicates she is subject to the requirement, the second, dated August 12, 1985, says she is not, the third, dated August 13, 1986, says she is and the fourth, and last, dated July 7, 1987, says she is not. This last extension of her J-1 status was valid until July 1, 1988, and covered the date on which she graduated, May 29, 1988. This final determination will be seen as controlling in this case. Therefore, the applicant is not subject to the two year foreign residence requirement.

In this proceeding, it is the applicant who bears the burden of proving his or her eligibility. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden.

ORDER: The appeal is sustained.

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