



U.S. Citizenship
and Immigration
Services

H-3

[REDACTED]

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 22 2004

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:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 rejected and the matter will be remanded to the Director for further action consistent with this decision.

The record reflects that the applicant is a native and citizen of Pakistan 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 graduate medical education or training. The applicant was admitted to the United States as a nonimmigrant exchange visitor in 1994. She married a native and citizen of Pakistan and lawful permanent resident (now, naturalized citizen) of the United States in December 1994, and they have one United States citizen child born in November 1995. The applicant filed a Form I-612, Application for a Waiver of the Foreign Residence Requirement under Section 212(e) of the Act (I-612 application) in June 1998. The application was denied by the Director, Vermont Service Center on June 10, 1998, based on a finding that the applicant had failed to establish her spouse or child would suffer exceptional hardship if she fulfilled her two-year foreign residence obligations. Counsel for the applicant appealed the director's decision to the AAO on July 13, 1999. The appeal was dismissed by the AAO on December 27, 1999, based on a finding that the applicant had failed to establish her spouse or child would suffer exceptional hardship if they were temporarily separated from the applicant. Counsel for the applicant filed a motion to reconsider the AAO decision on January 24, 2000. The motion to reconsider was dismissed by the AAO on June 21, 2000, and the previous AAO order was affirmed.

The record reflects that on December 20, 2001, the California Service Center approved a Petition for Nonimmigrant Worker filed by Indus Medical Associates on the applicant's behalf (valid from December 18, 2001 to December 17, 2004, file number WAC-02-037-51418). On November 26, 2002, the applicant filed a new I-612 application with the California Service Center (file number WAC-03-046-54217), and on September 2, 2003, the Director, California Service Center forwarded a Form I-613 Request for United States Information Agency Recommendation of the Section 212(e) Waiver (Form I-613), to the Waiver Review Division of the Department of State (WRD). The Form I-613 indicates the Director, California Service Center determined that compliance with the foreign residence requirement would impose exceptional hardship upon the applicant's U.S. citizen spouse and child. The record reflects that the WRD approved a waiver for the applicant on December 10, 2003.

On February 19, 2004, however, the Director, California Service Center, determined that because the applicant had previously filed and been denied a Form I-612, waiver to her foreign residence requirement by the Vermont Service Center and the AAO, the applicant was not entitled to file a new I-612 application. The director indicated further that the second I-612 application must therefore be considered to be a motion to reopen or reconsider, within the AAO's sole jurisdiction. In addition, the director indicated that, because the applicant's motion did not specifically identify any erroneous conclusion of law or statement of fact in the previous AAO decision, it should be summarily dismissed by the AAO. The second I-612 application was denied accordingly.

On appeal, counsel asserts that the applicant was entitled to file a new I-612 application with the director. Counsel asserts that the present I-612 application is not a motion to reopen or reconsider the applicant's previous waiver application, but rather that it is a new application based on new circumstances and conditions. Counsel asserts further that adjudication of the new I-612 application is within the director's jurisdiction, and that the director erred in not approving the applicant's I-612 application subsequent to a finding of exceptional hardship in the applicant's case and the WRD's approval of the section 212(e) waiver.

As noted by counsel, neither the Act nor the Federal Regulations contain any provisions to preclude an applicant from filing a new I-612 waiver application pursuant to section 212(e) of the Act, even if a previous application has been denied by CIS or the AAO. The AAO notes further that nothing in the CIS adjudicator's manual or in CIS internal policy guidance databases indicates that an applicant cannot file a new application for a section 212(e) waiver after an AAO dismissal of an appeal pertaining to a previous I-612 waiver application. The AAO therefore finds that the applicant was entitled to file a second I-612 application with the director, and that because the application was a new application, the director had jurisdiction over the second, new application. The AAO notes that because the director made no decision in the present case, the AAO has no appellate jurisdiction over the present matter. Accordingly, the appeal will be rejected and the matter will be remanded to the director for adjudication of the applicant's I-612 application.

ORDER: The appeal is rejected and the matter is remanded to the director for further action consistent with this decision.