



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of of the Foreign Residence Requirement under 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 dismissed.

The record reflects that the applicant is a native of Colombia who is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e). The applicant was admitted into the United States as a J1 nonimmigrant exchange visitor on March 28, 1998. His J1 exchange visitor status expired on November 30, 2003. On February 12, 2000, the applicant married a naturalized U.S. citizen. The applicant presently seeks a waiver of his two-year foreign residence requirement in Colombia, based on the claim that his U.S. citizen wife will suffer exceptional hardship if she is separated from the applicant for two years.

The director concluded that the applicant's wife (Ms. Ruiz) would suffer exceptional hardship if she accompanied the applicant to Colombia. The director determined further, however, that the applicant had failed to establish that his wife would suffer exceptional hardship if she remained in the U.S. while the applicant fulfilled his two-year foreign residence obligation in Colombia. The application was denied accordingly.

Counsel asserts on appeal that the evidence contained in the record establishes Ms. Ruiz will suffer exceptional emotional hardship if the applicant returns to Colombia for two years.

Section 212(e) of the Act states in pertinent part that:

(e) No person admitted under section 101(a)(15)(J) 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 United States Information Agency 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, [s]hall 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 an interested United States Government agency . . . or of the Commissioner of Immigration and Naturalization [now, Citizenship and Immigration Services, CIS] 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), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General [now the Secretary,

Homeland Security, "Secretary"] 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 [Secretary] to be in the public interest. . . And provided further, That, except in the case of an alien described in clause (iii), the Attorney General [Secretary] 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 *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), the Board of Immigration Appeals (Board) stated that, "[t]emporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e)".

In *Matter of Bridges*, 11 I&N Dec. 506 (BIA 1965), the Board stated:

In determining the merits of an application for a waiver of the foreign residence requirement, we must consider the Congressional intent of the statute . . . the Subcommittee reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states, "It is believed to be 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 present record contains letters from the applicant and his wife asserting that [REDACTED] suffered major depressive episodes in the past and that a two-year separation from her husband would cause [REDACTED] to suffer exceptional emotional and professional hardship. The record additionally contains letters from Ms. [REDACTED] parents and from [REDACTED] the applicant's co-workers, stating their personal opinions that a separation from the applicant would cause [REDACTED] to suffer emotional and professional hardship.

In addition to the above letters, the record contains the following documents relating to Ms. Ruiz's psychological condition:

A January 29, 2002, letter from [REDACTED] stating that due to the lack of frequent contact with her family and an unsupportive living environment, [REDACTED] suffered a recurrent major depressive episode with severe anxiety when she was a medical student. [REDACTED] states that at that time [REDACTED] required antidepressant medication to control her mood symptoms, and that [REDACTED] became symptom-free after moving back to California near her family, and later her husband. [REDACTED] concludes that unless [REDACTED] takes appropriate care, her history of severe depression and anxiety predisposes her to recurrences of mood disorders.

A July 8, 2003, letter from [REDACTED] stating that he treated [REDACTED] for several months in 1999-2000, when she was a psychiatric resident, and that he treated her briefly in the Spring of 2002. [REDACTED] states that prior to his treatment, [REDACTED] had previously experienced severe and recurrent major depressive episodes with severe

anxiety during her college years and her medical school years in the Midwest, but that with her return to California, she had been without mood disorder symptoms due to supportive relationships with her family and the applicant. [REDACTED] states that between 1999 and 2000, the applicant came to see him due to doubts about her relationship with the applicant and her fear of a return of her depression. [REDACTED] successfully left treatment when her relationship with the applicant became more secure. Dr. Koshkarian states that he treated [REDACTED] with telephone contact and anti-depressant medications in the Spring of 2002 at a time she was undergoing fertility studies and hormonal treatment for pregnancy, and was studying in San Francisco, California, away from the presence and support of her husband. [REDACTED] mood stabilized when she returned home in June 2002. [REDACTED] states that [REDACTED] last contacted him in June 2003 due to a recurrence of symptoms of anxiety and depression related to her husband's possible required departure to Colombia. Based on the above history, Dr. [REDACTED] concludes that a separation from the applicant would lead to [REDACTED] suffering serious symptoms of major depression and anxiety.

A January 29, 2004, Summary of Forensic Psychiatric Examination (Summary) and January 28, 2004, Evaluation of [REDACTED] conducted by [REDACTED], concluding that [REDACTED] has recurrent and severe Major Depressive Disorder. [REDACTED] states that [REDACTED] suffered her first major depressive episode in 1993 when she began medical school. The summary describes the symptoms [REDACTED] experienced at that time and states that [REDACTED] took Prozac and a sleeping sedative until 1997, when she returned to California. The summary states further that [REDACTED] depression (described as anxiety and difficulty sleeping and concentrating) reoccurred in the context of a separation from her husband in July 2001, and that [REDACTED] was placed on psychotropic medication at that time, and the summary adds that [REDACTED] situation was further complicated by her inability to become pregnant. [REDACTED] states that in June 2003, [REDACTED]'s anxiety increased as a result of the applicant's visa problems and his inability to start a geriatric psychiatry fellowship, and that as a result, [REDACTED] was placed on two antidepressants that slightly improved her condition.

A Statement of Services from [REDACTED] reflecting that [REDACTED] saw him for therapy/medical management, on November 13, 2003 and November 21, 2003.

A February 13, 2004, letter from [REDACTED], stating that [REDACTED] became his patient on November 13, 2003. The letter states that [REDACTED] received psychiatric consultation and treatment from [REDACTED] on previous occasions, and that she had sought treatment from these doctors due to the recurrence of her major depressive disorder. [REDACTED] states that [REDACTED] requires a combination of pharmacotherapy and psychotherapy to achieve a partial resolution of symptoms. Dr. [REDACTED] then refers to, and reiterates, information contained [REDACTED] and Dr. [REDACTED] letters, and states that, although [REDACTED] has improved under her current treatment regimen, her improvement is predicated on her hope that the applicant's immigration status will be resolved. [REDACTED] concludes that [REDACTED] mood disorder diagnosis and prognosis remain the same as previously found by [REDACTED].

The AAO finds that the medical evidence submitted by the applicant fails to establish that [REDACTED] suffers from recurrent major depressive episodes. The AAO notes that [REDACTED] was not [REDACTED] patient prior to, or subsequent to, his writing a January 29, 2002 letter on her behalf. The AAO notes further that Dr. [REDACTED] letter does not indicate that [REDACTED] suffered from symptoms or an occurrence of major depressive episode at the time that [REDACTED] wrote his letter. In addition, the AAO notes that [REDACTED] letter provides no indication that he reviewed medical or other evidence to verify that [REDACTED] suffered from, or was treated for, a major depressive episode while she was in medical school. Moreover, the record contains no medical evidence or letters from treating doctors to establish that [REDACTED] suffered major depressive episode while she was in medical school.

Likewise [REDACTED] letter fails to indicate that he reviewed or independently verified that [REDACTED] suffered severe and recurrent major depressive episodes with severe anxiety while she was in medical school. [REDACTED] failure to verify the occurrence of these episodes is further accentuated by [REDACTED] statement that [REDACTED] also suffered major depressive episodes and anxiety while she was in college. This statement is not corroborated or substantiated in any of the other medical letters or the letters provided by the applicant. The AAO notes that [REDACTED] letter provides no detail or evidence pertaining to the exact dates he saw [REDACTED] or the exact treatment provided. Moreover, [REDACTED] indicates that [REDACTED] feared that she would suffer a return of her depression when she saw him between 1999 and 2000 [REDACTED] did not actually suffer from a major depressive episode at that time. The AAO additionally notes that the anti-depressant and phone contact treatment provided to [REDACTED] in the Spring of 2002 was in the context of her undergoing fertility studies and hormonal treatment for pregnancy – each of which may have contributed to any symptoms of depression in [REDACTED]. Furthermore [REDACTED] s letter does not indicate that Ms. [REDACTED] required medical treatment when she contacted him in June 2003.

The AAO notes that [REDACTED] has also never been [REDACTED] patient, and that his psychiatric evaluation and summary are based on a review of the applicant's waiver application documents and a psychiatric examination with [REDACTED] of less than three hours. There is no indication that [REDACTED] reviewed or saw medical evidence to verify a major depressive episode occurrence during [REDACTED] s medical college years. Moreover, it is unclear how [REDACTED] medically concluded, based on his review of affidavits [REDACTED] January 29, 2002, letter and [REDACTED] s November 2003, Statement of Services, that [REDACTED] "remains with significant symptomatology including insomnia, (averaging 1-5 hours of sleep/night), anhedonia, trouble concentrating, some somatic symptoms (including an exacerbation in previously existing nosebleeds) and trouble making decisions in her psychiatric practice."

Although [REDACTED] letter indicates that [REDACTED] is presently a patient of his [REDACTED] diagnosis appears to be based, in large part on the information contained in the letters written by [REDACTED]. There is no indication that [REDACTED] reviewed or independently verified that Ms. Ruiz suffered severe and recurrent major depressive episodes with severe anxiety while she was in school. Moreover, the record reflects that [REDACTED] has seen [REDACTED] on only two occasions (her initial visit on November 13, 2003, and a subsequent visit on November 21, 2003). The AAO notes that neither [REDACTED] letter nor his Statement of Services provides detailed information regarding the nature, frequency or length of treatment that [REDACTED] received from [REDACTED]. Moreover, although [REDACTED] concludes that [REDACTED] is vulnerable to a mood disorder relapse, he also states that [REDACTED] presently on a medical regime, which has improved her condition.

The AAO finds that the above evidence fails to establish that [REDACTED] suffers from recurrent major depressive episodes or that she has a history of requiring treatment for major depressive disorder. Moreover, the AAO finds that the remaining evidence contained in the record also fails to establish that Ms. Ruiz would suffer hardship significantly beyond that normally suffered upon the temporary separation of two spouses, if she remained in the U.S. for two years without the applicant.

The AAO finds that [REDACTED] family members and co-workers are not qualified to provide probative opinions about the emotional and professional hardship that [REDACTED] would suffer if she were separated from the applicant. Moreover, the AAO notes that the evidence in the record fails to establish that [REDACTED] would reasonably suffer exceptional emotional hardship due to fears relating to the country conditions in Colombia.

Although the applicant states that [REDACTED] fears he will be kidnapped due to the apparent kidnapping in Colombia of a family friend and two of [REDACTED] family members, the applicant has failed to demonstrate the circumstances surrounding the kidnappings in Colombia, and the record contains no evidence to indicate that the applicant is similarly situated to the family members or friend. The AAO additionally notes that the U.S. Department of State report on Colombia is general in nature, and that it does not speak to, or relate specifically to the applicant's situation, and the AAO notes further that the U.S. Department of State travel warnings submitted by the applicant, relate primarily to threats faced by U.S. citizens in Colombia. Moreover, the evidence in the record, including the applicant's statement, reflects that the applicant has voluntarily returned to Colombia on a few occasions since learning of the kidnappings, and there is no indication in the record that the applicant has faced specific danger or suffered harm while in his country.

The burden of proving eligibility for a waiver under section 212(e) of the Act, rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that in the present case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.