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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 1 8 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:

SELF-REPRESENTED

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

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 applicant is a native of the Ivory Coast. He 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), because he participated in an exchange program financed by the United States (U.S.) government for the purpose of promoting international, educational and cultural exchange, and because the Director, Waiver Review Division, U.S. State Department Visa Office (WRD) has designated the Ivory Coast as requiring the services of persons with the applicant's specialized knowledge or skill.

The record reflects that the applicant was admitted into the United States as a J1 nonimmigrant exchange visitor on March 6, 1991. The applicant subsequently extended his visa through December 31, 1998. The record reflects that the applicant remained unlawfully in the United States after the validity of his J1 visa ended. The applicant married a naturalized U.S. citizen on November 3, 2000, and the applicant and his wife have three U.S. citizen children, born August 19, 1996, born February 2, 1998 and born January 13, 2001). The applicant's spouse-based Petition for Alien Relative was approved by Citizenship and Immigration Services (CIS) on June 25, 2002. The applicant presently seeks a waiver of his two-year residence requirement in the Ivory Coast, based on the claim that his family would suffer exceptional emotional and financial hardship if they were separated from the applicant for two years.

The director found that the applicant established his wife and children would suffer exceptional hardship if they moved temporarily to the Ivory Coast with the applicant. The director concluded, however, that the claim that his wife and family would suffer extreme financial hardship if they remained in the U.S. without the applicant, had not been established. The application was denied accordingly.

On appeal, the applicant indicates that the political situation in the Ivory Coast is unstable and that his wife (Mrs will suffer extreme emotional hardship if he is required to temporarily depart the country, due to her fears for his life and safety in the Ivory Coast. The applicant indicates further that he is the main financial supporter in his family and that his wife would be unable to care for her children or support the family's lifestyle without his help.

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 . . . shall be eligible to apply for an immigrant visa, or for permanent residence . . . 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 a 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 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 *Keh Tong Chen v. Attorney General of the United States,* 546 F. Supp. 1060, 1064 (D.D.C. 1982), the U.S. District Court, District of Columbia stated that:

> Courts deciding [section] 212(e) cases have consistently emphasized the Congressional determination 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 his country would cause personal hardship. Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than the anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad." (Quotations and citations omitted).

The AAO finds that in the present matter, the altered financial circumstances that the applicant's family would face upon his departure do not constitute extreme hardship. Although the applicant's wife would not benefit from the approximately $8000.00/month salary earned by the applicant, the record reflects that the applicant's wife is also gainfully employed, and that she receives benefits and earns a salary of approximately $3000.00/month. The record additionally reflects that the applicant's mother-in-law lives with the applicant's family, that she is claimed as their dependent for tax purposes, and that she is available to care for the applicant's children when they are out of school and/or when their parents work. The AAO additionally notes that many of the applicant's expenses are based on the ownership of a second vehicle and the purchase of a

second piece of land. Presumably, the applicant's expenses could therefore be reduced if the applicant chose to sell the extra assets upon his departure.

The AAO finds that the evidence in the record also fails to establish that the applicant's wife would suffer emotional hardship beyond the anxiety and loneliness ordinarily anticipated from a two-year separation. The AAO notes that aside from a generalized statement that she fears for her husband's life if he returns to the Ivory Coast, and an assertion that it is important to the applicant's wife that her family stay together as a family unit, the record contains no evidence to indicate or establish that the applicant's wife is emotionally affected by the temporary departure of her husband. The applicant has therefore failed to establish that his wife would suffer emotional hardship beyond that normally anticipated or experienced upon the temporary separation of two spouses.[1]

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.

[1] The AAO notes that the applicant did not base his waiver application on a persecution claim in the Ivory Coast. The AAO will therefore not address the issue.