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U.S. Citizenship
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Office: VERMONT SERVICE CENTER

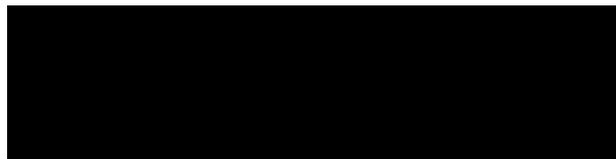
Date: **AUG 05 2005**

IN RE:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont 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 Ecuador. She was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on March 23, 1994 to attend graduate school at the University of Arkansas in Fayetteville. The applicant 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 record reflects that the applicant married [REDACTED] a United States citizen (USC), on August 22, 1998 and that they have two USC children; [REDACTED] was born on March 7, 1999, and [REDACTED] was born on March 29, 2001. The applicant seeks a waiver of her two-year residence requirement in Ecuador, based on the claim that her husband and children would experience exceptional hardship if they moved to Ecuador with the applicant for the two years she is required to live there, or if they remained in the United States.

The director concluded that the evidence submitted failed to establish that the applicant's departure from the United States would impose exceptional hardship to her USC spouse and children. The application was denied accordingly. *Decision of the Director*, Vermont Service Center, dated September 17, 2004.

On appeal, counsel contends that the applicant's spouse and children will suffer exceptional hardship if they accompany the applicant to Ecuador, or if they remain in the United States. In support of the appeal, counsel submitted a brief; an affidavit from [REDACTED] a speech-language evaluation of Roque; a developmental evaluation of Roque; a psychological evaluation of Roque; and an immigration report on the applicant. The entire record was considered in rendering this decision.

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

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, 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 an interested United States Government agency (or, in the case of an alien described in clause (iii),

pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of the Immigration and Naturalization [now, the Director of 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 except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): 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, "[E]ven though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary 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.)

I. Potential Hardship if [REDACTED] and the Children Accompany the Applicant to Ecuador

First analyzed is the potential hardship [REDACTED] and the children will experience if they live with the applicant in Ecuador for two years. The record indicates that [REDACTED] has worked for Citigroup Global Markets, Incorporated as a Director in Global Transactions, since March, 2004. Counsel asserts that forcing [REDACTED] to move to Ecuador for two years would disrupt his career because he has no work experience

or connections in Ecuador, and that upon his return to the United States, he would be at a disadvantage in the competitive financial services industry. [REDACTED] stated in his November 18, 2003 affidavit:

If I returned to Ecuador with her, it would be very disruptive to my career and would have very negative economic consequences for me and my family. Whereas I have worked for many years in the United States and have 13 years of successful work experience with Heller Financial, I have neither work experience nor a network in Ecuador. I have been searching for the last eight months in the United States and know first hand the challenges involved in finding gainful employment at my level of experience. I am fortunate to have received a generous severance package from GE Capital as a result of my 13 years of service with Heller Financial. This benefit will run out very shortly, and I feel that if I were to go to Ecuador with my wife, all of the work that I have done during the last eight months would be lost.

Neither counsel nor the applicant has presented evidence establishing that [REDACTED] has sought employment in Ecuador, that he would be unable to obtain suitable employment in Ecuador, or that he would be unable to continue his career in the United States upon his return. The AAO notes that [REDACTED] has extensive experience in the financial services industry and that he works for Citigroup, a global corporation. [REDACTED] lived in Ecuador as a child and speaks Spanish. These facts would presumably help him find employment in Ecuador and continue his career when he returns to the United States. Furthermore, the law does not require that the applicant and her family maintain the same standard of living that they enjoy in the United States.

Counsel maintains that it is impossible for [REDACTED] to accompany the applicant to Ecuador because he would have to give up his job in the United States; therefore, the children will be separated from their father for two years and will be deprived of the affection, emotional security and direction of their father. As indicated above, counsel has not shown that [REDACTED] would be unable to find suitable employment in Ecuador. If [REDACTED] remains in the United States while the children accompany the applicant to Ecuador, it is by choice.

Counsel contends that [REDACTED] will experience exceptional hardship if he moves to Ecuador for two years because he suffers from developmental, language and speech problems. [REDACTED] a Speech-Language Pathologist, evaluated [REDACTED] between September and October 2003. [REDACTED] indicated that Roque has deficits in his language development, specifically in comprehension of basic concepts of spoken language and in use of language for socialization in school. [REDACTED] recommended direct language therapy to help [REDACTED] improve his mastery of basic concepts as well as to increase his range of language for play and socialization:

It is necessary to provide intervention that is pragmatic, natural and relevant to [REDACTED] home and school experiences. Intervention should help Roque increase the number and accuracy of linguistic concepts (coding negation, quantity, space, and time relationship). He should increase the number of utterances with coordination of phrases and clauses used in communicative interactions. Language therapy should also help [REDACTED] improve his ability to integrate language meaning and structure for social interaction with peers. It is expected that [REDACTED] will demonstrate improvement in these areas, with direct language therapy, based on his steady progress and on continued intervention with play therapy.

The Child Guidance Center (the Center) evaluated [REDACTED] between March and May, 2003 and prepared a Developmental Evaluation dated July 2, 2003 which concluded:

[REDACTED] is a boy whose overall cognitive functioning is in the high average range. His achievement scores are notably behind his above average processing scores, and fall in the average to below average range. He had a particularly difficult time with the section that involved abstract thinking. It is difficult to know whether a receptive language problem may have impacted his performance in this or in any others. We believe that he needs detailed assessment of both receptive and expressive language functioning in order to address this question.

Based on [REDACTED] demeanor and play content, the Center concluded that he was depressed. The Center recommended that Roque begin working with a language therapist and a psychotherapist.

The Stamford Public Schools District Preschool Team assessed [REDACTED] on June 27, 2003 and July 7, 2003 and prepared a Psychological Evaluation dated July 9, 2003 which concluded:

[REDACTED] was referred to the Stamford Preschool Team due to concerns regarding his communication and socialization skills. According to the referral [REDACTED] exhibits difficulties in his understanding of verbal directives, as well as expressive language concerns, which impacts his ability to interact with his peers and teachers. He has been evaluated at Child Guidance, and is currently receiving private play therapy. A classroom observation revealed difficulties in [REDACTED] expressive language ability. He was rarely observed to use language spontaneously to comment on his environment or engage in conversation with his peers. He spent much of the time watching passively, and was not observed to interact with peers. He was able to comply with some of his teacher's directives, yet did require some additional prompting. Results of the Vineland Adaptive Behavior Scales, completed by Mrs. [REDACTED] indicate moderately low scores in the areas of communication, daily living skills, and socialization.

Shortly after the preparation of this evaluation, Stamford Public schools approved [REDACTED] for special education.

Dr. Mel Gluck, a psychologist, prepared an undated Immigration Report of [REDACTED] In regard to Roque, Dr. Gluck stated:

However, most significantly, if the family returns to Ecuador, the services that would be necessary for the child would not be available. The son is demonstrating symptoms consistent with that of a child who suffers from a pervasive developmental disorder, or Aspergers Syndrome or pre-autistic like behavior. He demonstrates an inability to communicate at a level expected for his chronological age or even one who is slightly younger, has difficulty with transitions, has significant language developmental delay, and is often absorbed in his own world. [REDACTED] aged four requires the intensive intervention services likely to be available in very few

countries such as the United States. It is of the utmost importance to receive these intervention services at an early stage in his life.

Dr. Gluck's report appears to be based on an interview with the applicant, an interview with [REDACTED] and an observation/interview with Roque. Dr. Gluck does not refer to any other contact with the family, nor does he indicate that he has provided treatment or formulated a treatment plan. Dr. Gluck's lack of clinical experience with the family raises doubts about his ability to diagnose Roque's condition. The AAO notes that Dr. Gluck's use of such terms as pervasive developmental disorder, Asperger's Syndrome, or pre-autistic like behavior is not mirrored in any of the other reports. Furthermore, Dr. Gluck does not indicate any expertise in diagnosing or treating children.

The record does not support counsel's contention that [REDACTED] will not have access to the language, speech and psychological therapy in Ecuador that he requires. First, counsel's statement that "as Dr. Gluck's report and the other referenced reports maintain, if [REDACTED] is forced to leave the United States and return to Ecuador with his mother, the move will have devastating effects on his social, language and speech development" is not supported by the record. Dr. Gluck's report is the only one that refers to what will happen if [REDACTED] moves to Ecuador. In fact, none of the other reports mention Ecuador. Second, there is no evidence indicating that Dr. Gluck possesses knowledge of country conditions in Ecuador or the availability of services there. Third, [REDACTED] statement that [REDACTED] will be unable to receive appropriate care in Ecuador is not supported by evidence. The AAO notes that [REDACTED] and his family moved from Ecuador to the United States approximately 35 years ago, so it is unclear whether [REDACTED] is familiar with current country conditions in Ecuador. Fourth, the record contains no evidence addressing the availability of services in Ecuador.

II. Potential Hardship if [REDACTED] and the Children Remain in the United States

Next examined is the potential hardship to [REDACTED] and the children if they stay in the United States during the two years the applicant is required to live in Ecuador. As United States citizens [REDACTED] and the children are not required to accompany the applicant to Ecuador. Counsel maintains that if [REDACTED] remains in the United States, he will be deprived of his wife's love and emotional support and the distance between them will strain the fabric of their marital relationship. [REDACTED] stated:

If I remained in the United States and my wife left for Ecuador, I would be devastated. It would be extremely difficult for me to be separated from my wife and possibly my children as well. I would essentially lose my family for two years, which would be very disruptive to my life and my career.

The applicant does not explain how he would "be devastated," nor does not explain how the effects would go beyond those normally associated with a two-year separation. Also, the AAO notes that the applicant and his children can visit the applicant in Ecuador.

Counsel asserts that if the children remain in the United States with [REDACTED] he will be unable to provide them with the care that they require because his job is demanding and time consuming. [REDACTED] explained:

Conversely, it would be impossible for me to properly take care of [REDACTED] by myself in the United States, as much of my time is spent on securing new employment. I would not be able to provide the consistent care that he needs and all the logistics related to ensuring that he attends all his therapy sessions. In addition, Roque is extremely attached to his mother and I fear that any separation from her would adversely affect his emotional development.

Counsel has not established that [REDACTED] will experience exceptional hardship if he remains in the United States with his father. First [REDACTED] secured employment that began in March 2004, so he is no longer searching for work. Second, the record contains no evidence indicating that [REDACTED] would be unable to arrange for child care to assist him with the children during the two years the applicant would be in Ecuador. Third, the record contains no evidence indicating that the emotional effect on Roque will go beyond what is normally associated with such a separation. Fourth, as indicated above, [REDACTED] and the children can visit the applicant in Ecuador.

Counsel contends that separating the children from their mother will deprive them of much needed affection, emotional security and direction, and a stable family life. Counsel has not established that [REDACTED] is unable to hire someone to assist him to properly care for the children, nor has counsel shown that the effects of a two-year separation would go what would normally be expected.

Finally, the AAO notes that the applicant and [REDACTED] knew that the applicant was subject to the two-year foreign residency requirement and chose to get married and have children in the United States.

III. Conclusion

The AAO finds that the evidence in the record fails to establish that the applicant's husband and children would experience exceptional hardship if they lived in Ecuador for two years with the applicant. The AAO also finds that the evidence in the record fails to establish that the applicant's husband and children would experience exceptional hardship if they remained in the United States while the applicant returned temporarily to Ecuador.

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 her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.