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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 16 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.

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 India. He was admitted to the United States as a J1 Nonimmigrant Exchange Visitor on June 17, 1994 to receive graduate medical training at Wayne State University Health Center in Detroit, Michigan. 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 is married to [REDACTED] (Dr. [REDACTED] a native of India. Dr. [REDACTED] was also admitted to the United States as a J1 visitor. The applicant and Dr. [REDACTED] have two daughters; [REDACTED] was born in India on January 17, 1994 and [REDACTED] was born in the United States on June 29, 1999. The applicant seeks a waiver of his two-year residence requirement in India, based on the claim that his daughter [REDACTED] would experience exceptional hardship if she moved to India with her mother and the applicant for the two years he is required to live there, or if [REDACTED] remained in the United States with her mother.

The director concluded that the evidence submitted failed to establish that the applicant's departure from the United States would impose exceptional hardship to his United States citizen daughter. The application was denied accordingly. *Decision of the Director, Vermont Service Center, dated October 15, 2003.*

On appeal, counsel contends that the applicant cannot fulfill the residency requirement without imposing an exceptional hardship on his United States citizen daughter [REDACTED] and that the director misapplied the legal standard governing the determination of hardship. In support of the appeal, counsel submitted a brief; an affidavit from Dr. [REDACTED] a letter dated December 5, 2003 from Ann Frisch, a psychologist, regarding [REDACTED] a letter dated December 9, 2003 from [REDACTED] a speech language pathologist, regarding [REDACTED] various financial documents; and an article on anxiety disorders from the National Institute of Mental Health. In support of the original waiver application, counsel submitted an affidavit from the applicant; a letter dated February 11, 2003 from Ann Frisch; a January 20, 2003 speech/language evaluation of [REDACTED] from [REDACTED] [REDACTED] medical records for [REDACTED] country conditions information on India; letters in support of the applicant and his family; and a variety of other documents. 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 to [REDACTED] if She Remains in the United States

First examined is the potential hardship to [REDACTED] if she lives in the United States with her mother while the applicant lives in India for two years. The director concluded that because Ms. [REDACTED] was in J-1 status, which the applicant stated might be extended, she could remain in the United States with [REDACTED] while the applicant returned to India for two years. In her affidavit, Ms. [REDACTED] stated that her J-1 status expires on June 30, 2004. Counsel contends that Ms. [REDACTED] future status is uncertain, and even if it gets extended, she would still be subject to the two-year foreign residency requirement.

The record indicates that Ms. [REDACTED] J-1 status expired at the completion of her medical residency in June 2004, and that the applicant extended his legal status in the United States for an additional three years after he completed his three-year medical residency. The record contains no evidence concerning Ms. [REDACTED] current immigration status. Because the record is inconclusive, the AAO cannot assume that Ms. [REDACTED] has legal status in the United States. Accordingly, if the applicant's waiver is denied, the entire family will have to move to India. As it cannot be expected that [REDACTED] would be left in the United States without her parents, this decision only addresses the potential hardship that [REDACTED] would experience in India.

II. Potential Hardship to [REDACTED] if She Accompanies the Applicant to India

Next examined is the potential hardship to [REDACTED] if she lives in India with her mother and the applicant for two years while the applicant fulfills his residency requirement. The director stated:

The medical problems of your daughter, while apparently not severe, are better treated in the United States. You have made the point that it would be an exceptional hardship for your youngest daughter to return with you abroad to fulfill your two-year residency requirement. However, there is no reason your daughter must return with you.

The remainder of the director's decision addressed the potential hardship to [REDACTED] if she remained in the United States with her mother for two years. The director provided no legal analysis of the evidence in the record related to the possible hardship that [REDACTED] would experience if she lived with her family in India for two years. The AAO's review of the record is de novo. Accordingly, the AAO will examine the record to determine whether [REDACTED] will experience exceptional hardship if she lives in India for two years.

Counsel maintains that [REDACTED] has been "diagnosed with a severe psychiatric disorder." In a February 3, 2003 letter addressed to counsel, Dr. [REDACTED] a psychologist, indicated that [REDACTED] has Separation Anxiety, Early Onset (309.21 DSM IV). Dr. Frisch stated:

It is of over-riding importance for [REDACTED] that her life have continuity. This requires first, that she live with her nuclear family: her mother, father and sister, second, that she remain in the United States.

It is also my professional opinion as a psychologist that [REDACTED] life would be permanently and negatively affected if her family had to move to India. Her separation anxiety would worsen. Children with separation anxiety are frequently sad and unhappy for months when they have to leave the home and neighborhood they are familiar with. [REDACTED] was and still is upset because the family moved to a new home not far from where they had previously lived. She

would be far more disturbed and homesick if the family moved to India where the culture, the language and the environment would be so different from what she is accustomed to. [REDACTED] would cling to her parents and sister more tightly than she does now. Her fierce thumb sucking accompanied by bits of hair wrapped around her thumbs would increase and her separation anxiety would worsen. Religious discrimination and the violence and terror that often accompany it would permanently affect her.

Dr. [REDACTED] letter does not establish that Nida will experience exceptional psychological hardship if she lives in India with her parents and sister for two years. First, it is unclear how Dr. [REDACTED] formulated her wide-ranging diagnosis of a three year-old child. Dr. [REDACTED] makes no reference to speaking with the applicant or Dr. [REDACTED] or to having any personal contact with [REDACTED]. It does not appear that Dr. [REDACTED] has met with or treated anyone in the family. Dr. [REDACTED] lack of a personal, therapeutic relationship with the family raises doubts about her ability to diagnose [REDACTED] psychological condition or to accurately predict her emotional response in India. Second, Dr. [REDACTED] expressed opinions on issues that she has no apparent expertise on, e.g. [REDACTED] speech problems, and country conditions in India. Third, aside from suggesting that [REDACTED] receive counseling, Dr. [REDACTED] did not formulate a treatment plan or indicate that [REDACTED] could not be treated. Fourth, even though Dr. [REDACTED] diagnosed [REDACTED] as currently suffering from separation anxiety disorder, the record contains no evidence that the applicant and Dr. [REDACTED] have arranged for any treatment for [REDACTED]. This raises doubts about the seriousness of [REDACTED] alleged psychological disorder. Fifth, counsel submitted an article on anxiety disorders from the National Institute of Mental Health. Counsel does not explain how this article, which discusses a wide range of disorders, applies to [REDACTED] condition. Also, the article indicated:

Effective treatments for each of the anxiety disorders have been developed through research. In general, two types of treatments are available for an anxiety disorder—medication and specific types of psychotherapy (sometimes called “talk therapy”). Both approaches can be effective for most disorders. The choice of one or the other, or both, depends on the patient’s and the doctor’s preference, and also on the particular anxiety disorder.

Given the availability of effective treatment, it is unclear why the applicant and Dr. [REDACTED] have not sought treatment for [REDACTED] condition. Sixth, counsel offered no evidence establishing that [REDACTED] would be unable to receive treatment in India. The AAO notes that as physicians, the applicant and Dr. [REDACTED] will presumably be better situated to assess the needs of their daughter, as well as to have better access to quality medical care, than the average person in India. Seventh, [REDACTED] parents are Indian citizens familiar with Indian culture, and they have presumably exposed [REDACTED] to that culture. This familiarity would ease the transition to living in India for two years.

[REDACTED] (Ms. [REDACTED] Assistant Director at the Goddard School, prepared a letter dated March 23, 2003 in which she stated:

I am writing on behalf of Dr. [REDACTED] and Dr. [REDACTED]. Their daughter [REDACTED] is a preschool student at the Goddard School, [REDACTED] joined Goddard School in the summer 2000 when she was one-year old. She is a very happy, well-adjusted preschooler who enjoys the daily pleasure of being three & half [sic] years old.

Ms. [REDACTED] evaluation should be given considerable weight because she sees [REDACTED] on a regular basis. The AAO notes that Ms. [REDACTED] evaluation was prepared after Dr. [REDACTED] letter, and Ms. [REDACTED] description of [REDACTED] as a "very happy and well-adjusted preschooler" contradicts Dr. Frisch's diagnosis.

In a second letter addressed to counsel dated December 5, 2003 that counsel submitted with the appeal, Dr. [REDACTED] restated (most of the language is taken verbatim from the earlier letter) the conclusions from her first letter. The second letter did not refer to any additional facts, examinations, test results, treatment or meetings with the family. Given that this letter contains no new information and that Dr. [REDACTED] begins it by stating "I understand that the USCIS has requested more information about [REDACTED] it appears that Dr. [REDACTED] prepared the letter solely because counsel received the denial of the applicant's waiver. The second letter adds no new evidence to the record. Also, the AAO notes that the record contains no evidence that [REDACTED] received any treatment during the time between Dr. [REDACTED] two letters. Presumably, if [REDACTED] condition was as serious as Dr. [REDACTED] claims, the applicant and Dr. [REDACTED] both of who are physicians, would have sought treatment for their daughter.

Counsel contends that [REDACTED] has a speech/language delay that cannot be treated in India. [REDACTED] a speech/language pathologist at Cooper Hospital/University Medical Center, evaluated/tested [REDACTED] on January 20, 2003 and indicated the following clinical impressions:

[REDACTED] age 3 years, 6 months, presents with moderately high auditory comprehension of language and a high average expressive communication with moderately low articulation skills. This phonological disorder is most noticeable in sentences as opposed to single words. In addition, her incorrect tongue placement of a slight tongue thrust, tongue forward position at rest and lateralization of /s/ and /z/ sounds can make [REDACTED] difficult for an unfamiliar listener to understand. Nida's language skills far exceed her articulation skills which can result in some frustration and [sic] accurately communicating her needs and wants.

[REDACTED] made the following recommendations:

It is recommended that trial speech therapy be initiated to address this oral motor difficulty of tongue thrust, tongue forward position resulting in a phonological disorder of fronting and lateralization. The goal of treatment would be to improve oral motor skills and articulation to offer accurate sound production. In addition, it was recommended [REDACTED] begin to wean off the pacifier as the pacifier encourages an immature tongue pattern.

The recommendations were discussed with [REDACTED] father. He expressed interest in outpatient speech therapy at this Center. [REDACTED] will be scheduled for speech therapy one time per week to address this oral motor difficulty and oral motor/phonological disorder. Prognosis for improvement is excellent.

[REDACTED] began speech therapy on February 6, 2003 at Cooper Hospital/University Medical Center with [REDACTED] speech language pathologist. [REDACTED] received six one-hour sessions over a period of seven weeks. In a March 15, 2003 letter, Ms. Gibbs concluded:

At this time [REDACTED] has attended 6 sessions each consisting of one hour. She is motivated and cooperative for all tasks presented by the clinician. [REDACTED] responds well to visual clues to

produce a variety of sounds . . . It is obvious during these sessions that [REDACTED] is completing the carry over activities that are provided each week. She has made some nice gains in the past 7 weeks.

Speech therapy will be temporarily placed on hold while her current therapist assumes a short-term leave of absence. The family will be provided with additional activities and strategies for a home program that will allow for continued practice of error sounds. Therapy will resume in the summer.

In a letter addressed to the district director dated December 9, 2003 that was submitted with the applicant's appeal, [REDACTED] stated:

[REDACTED] received weekly sessions of speech therapy by [REDACTED] in February and March 2003. [REDACTED] made very good progress in two months of speech therapy. Unfortunately [REDACTED] speech therapy was interrupted in April when her speech therapist left for maternity leave. Since then, [REDACTED] parents have continued her lessons at home as instructed by her therapist. Dr. [REDACTED] brought his daughter to me again for re-evaluation and to resume speech and language therapy sessions.

[REDACTED] indicated that [REDACTED] continued to have oral motor difficulties caused by poor tongue mobility and poor tongue placement for sounds. [REDACTED] concluded:

Although her parents have made every effort to continue her lessons at home, [REDACTED] can continue to progress only through professional therapy. She has shown a marked improvement from the original evaluation, but her progress has slowed since her therapy was discontinued.

Children have only a small window of opportunity to learn the skills necessary for communication. If [REDACTED] does not receive the therapy that she needs, that window of opportunity will shut and her future ability to communicate will be compromised. In order to ensure [REDACTED] speech and language development, I recommend that she continue with speech therapy with a licensed/certified therapist in this country without interruption. She will require speech therapy to correct her poor oral-motor abilities and her articulation.

The letters from [REDACTED] do not establish that [REDACTED] will experience exceptional hardship in India because of her speech/language delay. First, Ms. [REDACTED] January 20, 2003 letter indicates that a variety of tests were administered to [REDACTED] and what the specific results were. [REDACTED] December 9, 2003 letter referred to "re-evaluating" [REDACTED] speech and language skills but referred to no tests or test results. This raises questions about what [REDACTED] re-evaluation is based on.

Second, [REDACTED] stated in the December letter that [REDACTED] showed marked improvement since her previous evaluation, but that her progress had slowed after her therapy was discontinued. The AAO notes that [REDACTED] did not evaluate [REDACTED] at the conclusion of her speech therapy in April 2003, so it is unclear how [REDACTED] concluded in December 2003 that [REDACTED] progress had slowed. In other words, in determining the progress that [REDACTED] made, Ms. Harrington did not explain how she determined which part of [REDACTED] progress was from therapy and which part was from her parents working with her at home. These

facts raise questions concerning [REDACTED] assertion that [REDACTED] can continue to progress only through professional therapy.

Third, the applicant's claim that [REDACTED] has a serious speech/language delay is drawn into question by the fact that the applicant and Ms. [REDACTED] did not continue [REDACTED] therapy after Ms. [REDACTED] went on maternity leave. [REDACTED] went without therapy for at least seven months. It is unclear why the applicant and Ms. [REDACTED] would have their daughter tested, but only arrange for two months of therapy. The AAO notes that the applicant has the means to arrange for his daughter to receive therapy, and that the therapy that was provided was through Cooper Health System where the applicant works. Counsel offered no explanation of why the applicant did not continue the therapy for his daughter.

Fourth, assuming that [REDACTED] speech/language delay is accurately reflected in the above letters, counsel has provided no evidence establishing that [REDACTED] would be unable to obtain appropriate speech therapy in India. In his March 24, 2003 affidavit, the applicant stated that in India, speech therapy is nonexistent for children younger than four years old, and that for children older than four, the waiting list is too long. The applicant cited no evidence to support these claims. The AAO notes that a significant number of persons in India speak English, that private English language schools exist, and that the applicant and Ms. [REDACTED] are physicians who will presumably earn a respectable income in India. The applicant stated that he and his wife would not be able to send [REDACTED] to a private school, but he does not explain why. The family income, as well as their positions as physicians, would presumably provide them greater access to appropriate healthcare and other services. Also, [REDACTED] who the applicant consulted as a speech/language expert, indicated in her January 20, 2003 letter that [REDACTED] was being raised in a bilingual home, and that her father reported that she used English as her primary language. This directly contradicts the applicant's statement in his affidavit that [REDACTED] speaks and understands only English. Counsel offered no explanation for this inconsistency, which is significant because it raises questions about [REDACTED] speech/language abilities. If [REDACTED] is bilingual, it may make it easier to find an appropriate speech therapist in India.

Fifth, [REDACTED] indicated that "children have only a small window of opportunity to learn the skills necessary for communication." [REDACTED] is now six years old and has presumably been receiving speech language therapy since December 2003.

The record indicates that [REDACTED] was diagnosed with asthma in 2001. Counsel asserts that [REDACTED] asthma cannot be properly treated in India, and that air pollution in India will worsen her condition. Florence Pandit, a physician at Accel Pediatrics in New Jersey, examined [REDACTED] on March 13, 2001 and concluded:

[REDACTED] has moderate persistent asthma for which she requires frequent albuterol nebulizer treatment. Her asthma is exacerbated by infection. Dust, air pollution and smoke can also exacerbate her asthma.

During a visit to India with her family in June 2001 [REDACTED] had an asthma attack. Dr. [REDACTED] a pediatrician in Nagpur, examined and treated [REDACTED] on June 2, 2001. Dr. [REDACTED] prescribed antibiotics and saw [REDACTED] three days later, at which time her symptoms had improved. Dr. [REDACTED] advised the applicant and his family not to return to India because air pollution would worsen [REDACTED] asthma and because there is no pediatric intensive care unit in Nagpur, nor is there a specialist in pediatric asthma and allergy.

On August 2, 2002, [REDACTED] received a chest examination at Virtua-West Jersey Health System Radiology Department. The report concluded "examination of the chest in upright PA and lateral views shows no active disease of the lungs or pleura." The summary stated that the findings were normal.

Counsel has not established that [REDACTED] asthma cannot be properly treated in India, or that air pollution in India makes her condition unmanageable. [REDACTED] has been successfully treated with an albuterol nebulizer and with antibiotics. Both of these treatments are available in India. Indeed, Dr. [REDACTED] treated [REDACTED] in India, and the record contains no evidence indicating that this treatment was unsuccessful. Dr. Jaiswal's statement that Nagpur has no pediatric asthma specialist or pediatric intensive care unit does not establish that [REDACTED] will be unable to receive appropriate treatment. First, Dr. [REDACTED] successfully treated [REDACTED] when she was in India. Second, the lack of the specific pediatric facilities mentioned by Dr. [REDACTED] does not mean that [REDACTED] cannot be treated, e.g. by an asthma specialist who works with adults. Third, the applicant and his family are not required to live in Nagpur. Other cities may have superior medical care and less air pollution. Counsel submitted articles addressing the air pollution problem in India, but counsel does not explain how living in India for two years will cause [REDACTED] to experience exceptional hardship because of a treatable medical condition. Fourth, the applicant and Ms. [REDACTED] are doctors, which makes them more aware of [REDACTED] health needs and of what medical facilities are available, as well as better situated economically to seek proper care.

Counsel maintains that India is a dangerous country and that [REDACTED] would be at risk because she is American, and that the family would be at risk because they are Muslim. Counsel submitted extensive country conditions information regarding the political, social and religious situation in India. The articles address the tensions between India and Pakistan, the risk of terrorist attacks, and the tension between Hindus and Muslims. Counsel does not explain how these conditions relate to [REDACTED] or how they would cause her to experience exceptional hardship if she lived in India for two years. First, [REDACTED] parents are Indian citizens, as is her older sister. The applicant and Ms. [REDACTED] are familiar with Indian culture, so the fact that [REDACTED] is American will not be readily apparent. [REDACTED] parents have presumably exposed her to Indian culture, which will assist her in adjusting to living temporarily in India. Second, counsel does not explain how the tension between India and Pakistan would place [REDACTED] at particular risk. Third, there are millions of practicing Muslims in India. The applicant and his family do not have to live in an area where Hindu-Muslim tension is at a high level. Counsel does not explain how the specific incidents of religious strife that are reported in the articles relate to the applicant or his family, or why the tension would cause [REDACTED] to experience exceptional hardship.

In his affidavit, the applicant asserted that he and his wife would have difficulty finding jobs in India. The evidence in the record does not establish that the applicant or his wife would be unable to find suitable employment in India. The applicant stated that he has applied to many places in India, but aside from two letters informing him that he did not receive particular positions that he had applied for in Nagpur, and two letters from friends/colleagues who practice medicine in India, the record contains no evidence establishing that the applicant or his wife would be unable to find suitable employment anywhere in India.

The applicant asserted that he and his wife's American medical certifications are not recognized in India, but he offered no evidence to support this assertion. Counsel submitted a letter from [REDACTED], a pediatrician in Akola, India, who stated that "US trained doctors are less welcome in this country." Dr. [REDACTED] provided no examples or evidence to support his statement. The AAO notes that the applicant is an Indian citizen who attended medical school in India. Presumably, the pediatric experience (in addition to the certifications) that the applicant and his wife have gained in the United States (the applicant stated that

medical care in the United States is superior to that in India) will assist them in finding employment in India. The statements from the applicant and Dr. [REDACTED] contradict the purpose of the J-1 Visitor Exchange Program, which allows doctors to receive graduate medical training in the United States, in exchange for which they return to their countries to practice medicine. Counsel submitted several letters from American physicians commending the applicant's abilities (which are partly due to the training and experience he received in the United States) as a doctor. Under the terms of his J-1 visa, the applicant is expected to return to India to practice medicine so that his fellow Indian citizens can benefit from his training and experience in the United States. It would seem logical that the applicant gave consideration to possible employment opportunities upon return to India when he applied for the J-1 visa.

The applicant stated that because he and his wife will earn a fraction of what they earn in the United States, they would not be able to maintain their current standard of living and would be forced to sell their home. The AAO notes that the law does not require that the family maintain its current standard of living. In regard to the house, the applicant does not discuss other possibilities, e.g. renting it for the two years the family would live in India. Counsel has not established that the financial effects would go beyond what is normally expected from a two-year relocation.

The applicant asserted that he would have a difficult time finding a job when he returned to the United States. This assertion is unsupported by the record. In fact, the applicant indicated that the hospital where he works has had difficulty in replacing doctors. Counsel has submitted no evidence to establish that the applicant, an experienced and respected physician, would be unable to obtain suitable employment upon his return to the United States.

III. Conclusion

The AAO finds that the evidence in the record does not establish that the applicant's United States citizen daughter Nida would experience exceptional hardship if she lived in India with her mother and the applicant for two years.

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.